SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

No. 944

J. M. LEE, AS COMPTROLLER OF THE STATE OF FLORIDA, APPELLANT,

vs.

JOHN P. BICKELL, GEORGE B. BUCHANAN, ALFRED W. MANSFIELD, ET AL., ETC.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF FLORIDA

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[fol. 1] [Caption omitted]

[fol. 2]

IN UNITED STATES DISTRICT COURT IN AND FOR THE NORTHERN DISTRICT OF FLORIDA

In Equity. No. T—14

JOHN P. BICKELL et al., Co-partners Trading and Doing Business under the Firm Name and style of Thomson & McKinnon and Alpheus C. Beane et al., Co-partners Trading and Doing Business under the Firm Name and Style of Fenner, Beane & Ungerleider, Plaintiffs,

v.

J. M. LEE, as Comptroller of the State of Florida, Defendant

ORDER CONVOKING COURT UNDER SECTION 266 OF JUDICIAL CODE, REQUIRING DEFENDANT TO SHOW CAUSE WHY INTERLOCUTORY INJUNCTION SHOULD NOT ISSUE, AND GRANTING TEMPORARY RESTRAINING ORDER—Dec. 11, 1933

It having been made to appear from the verified bill of complaint in this above entitled cause that this suit is one in [fol. 3] which an interlocutory injunction is sought to restrain the enforcement and operation of Chapter 15,787, Laws of Florida, 1931 by restraining the action of a State officer, to-wit: the defendant Comptroller of the State of Florida, in the enforcement of such statute on the ground, among others, that the same violates provisions of the Constitution of the United States; and it further appearing from said verified bill that the threatened enforcement of said Florida statute by the defendant Comptroller, as alleged in said bill of complaint, through the collection of stamp taxes in the manner complained of in the bill of complaint under the construction of said statute as placed thereon by the defendant Comptroller will cause the plaintiffs to suffer loss and injury which will be irreparable, for the alleged reasons of unconstitutionality and for the reason that said injury cannot be adequately compensated for in damages, and this Court being of the opinion that such irreparable loss and damage would result to the plaintiffs unless a temporary restraining order be granted herein ex

parte to be effective until the time of the hearing and determination of the interlocutory injunction prayed for in said bill, and the plaintiffs having prayed for such temporary restraining order, and that a three-judge Court be convoked as contemplated in such case by Section 266 of the Judicial Code,

It is, Therefore, Ordered, Adjudged and Decreed as follows:

1. That the undersigned, the Honorable Wm. B. Sheppard, Judge of this above styled Court hereby calls to his [fol. 4] assistance to hear and determine the application for interlocutory injunction in this cause, the Honorable Nathan P. Bryan, Judge of the Circuit Court of Appeals for the Fifth Circuit, and the Honorable Alexander Ackerman, Judge of the District Court of the United States in and for the Southern District of Florida.

2. That the defendant, J. M. Lee, as Comptroller of the State of Florida, be and he is hereby required to show cause, if any he has, on December 21st, 1933 in the Federal Courtroom in the City of Pensacola, Florida, at 10 o'clock A. M., why an interlocutory injunction as prayed for in said bill of complaint should not be issued herein.

3. That a temporary restraining order be, and the same is hereby made restraining the defendant, J. M. Lee, as Comptroller of the State of Florida, and his agents, servants, employees and attorneys, and any and all officers of the said State acting by, through or under his direction or administration, from enforcing the Florida Stamp Tax Act, being Chapter 15,787, Laws of Florida, 1931, against the plaintiffs, through demanding or requiring that any tax provided for under said Act be paid with respect to or for or by reason of any written communication, document or memorandum which may have been or may hereafter be delivered, passed or exchanged by the plaintiff brokers or their employees to their Florida customers, or by their said customers to the plaintiffs or any of their employees, in connection with or in any manner related to the transactions for the purchase and sale of stocks or securities on Exchanges located outside of the State of Florida, which have been, or hereafter shall be made by the plaintiff brokers, or any of [fol. 5] their servants or employees, for or on behalf of any customers, who in Florida have requested or ordered, or

shall request or order the same to be made, and from levying any such tax provided for or contemplated by said Act, upon any books, ledgers, records, or memoranda in the possession of the plaintiffs or their employees in the State of Florida, relating to their acts and business in connection with the purchase or sale of any stocks or securities on Exchanges located outside the State of Florida for or on behalf of their customers, and which purchases or sales have been or shall be made by them in accordance with the requests, directions or orders to them by their customers, and from enforcing or causing to be enforced any penalties provided by said Act against the plaintiffs or any of their servants, agents or employees.

4. That this temporary restraining order shall become effective upon the filing in this cause of a bond of the firms of which the plaintiffs are members, to-wit, Thomson & McKinnon and Fenner, Beane & Ungerleider, signed for such firms respectively by a member of agent of the same, and which bond shall be made with good and sufficient surety to be approved by the Clerk or a Deputy Clerk of this Court, in the penal sum of $10,000 payable to the defendant, conditioned for the payment of such costs and damages as may be suffered by the defendant if it should be hereafter finally determined that this temporary restraining order was illegally or improvidently issued.

5. That the restraining order herein made shall remain in force only until the hearing and determination of the [fol. 6] application for interlocutory injunction herein, not to exceed ten days from this date, unless extended for like period within said time.

Issued and entered at Gainesville, Florida, at 1:30 P. M. O'clock this 11th day of December, A. D. 1933.

Wm. B. Sheppard, United States District Judge.

The following endorsement appears on the above and foregoing order:

This is to certify that a certified copy of the within temporary restraining order was served upon the defendant, J. M. Lee, as Comptroller of the State of Florida, by delivering such copy to him, this — day of December, 1933.

A. M. Lewis, United States Marshal for the Northern District of Florida, by T. H. Gilbert, Deputy Marshal.

[fol. 7] IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF HEARING ON APPLICATION FOR INTERLOCUTORY INJUNCTION—Filed Dec. 12, 1933

To the Honorable David Sholtz, as Governor of the State of Florida, and to the Honorable Cary D. Landis, as Attorney-General of the State of Florida, and to the defendant, the Honorable J. M. Lee, as Comptroller of the State of Florida:

You and each of you are hereby given notice, pursuant to the provisions of Section 266 of the Federal Judicial Code (Title 28 U. S. C. A. Sec. 380), that the District Court [fol. 8] of the United States, in and for the Northern District of Florida, has set for hearing and determination, in the federal courtroom in the Federal Building in the City of Pensacola, State of Florida, on the 21st day of December, 1933, at 10:00 o'clock in the forenoon of said day, the application for an interlocutory injunction in a suit brought by John P. Bickell, et al., Co-partners trading and doing business under the firm name and style of *Thomson & McKinnon*, and Alpheus C. Beane, et al., Co-partners trading and doing business under the firm name and style of Fenner, Beane & Ungerleider, against J. M. Lee, as Comptroller of the State of Florida, being cause No. T-14 in Equity in said Court, to enjoin the enforcement of Chapter 15,787, Laws of Florida, 1931, by enjoining the acts of the defendant Comptroller, and his agents, servants, employees and attorneys, from enforcing the said statute by the collection of any taxes therein provided for in respect of any of the matters and things complained of in the bill of complaint in said cause, and from enforcing any penalty set forth or provided for in said Act, on the ground, among others, that said statute violates the Constitution of the United States in the respects particularly set forth in said bill:

And that there is served upon you and each of you herewith and together with a copy of this notice and hereby by reference made a part of this notice, a true and correct copy of the original bill of complaint and of the exhibits

and of the affidavits attached to said bill, and a copy of the order of said District Court of the United States dated December 11, 1933, by which provision is made for the hearing of the application for an interlocutory injunction in [fol. 9] this cause and by which a temporary restraining order has been made and entered by said Court to be effective until the hearing and determination of the application for such interlocutory injunction.

Dated December 11, 1933.

Shutts & Bowen, by C. S. Carroll, Attorneys for Plaintiffs,

A copy of the foregoing notice of hearing and copies of the bill of complaint and of the order mentioned therein dated December 11, 1933, were received by the undersigned this 12th day of December, 1933.

David Sholtz, as Governor of the State of Florida; Cary D. Landis, as Attorney-General of the State of Florida, by J. V. Keen, Assistant Attorney General; J. M. Lee, as Comptroller of the State of Florida.

[fol. 10] IN UNITED STATES DISTRICT COURT IN AND FOR THE NORTHERN DISTRICT OF FLORIDA

In Equity. No. T-14

JOHN P. BICKELL, GEORGE B. BUCHANAN, ALFRED W. MANSFIELD, Selden F. White, Henry Holt, William L. Meffert, Alfred S. Rogers, Timothy P. Brosnan, Harold N. Scott, John W. Jordan, George H. Ross, James A. Kiernan, Henry T. Hermes and Benjamin E. Billings, Co-partners Trading and Doing Business under the Firm Name and Style of Thomson & McKinnon, and Alpheus C. Beane, Charles E. Fenner, Joseph N. Carpenter, R. Browder Flinn, John L. Julian, Earl H. Hulsey, John McCorkle, Robert A. McCord, Sully C. Pecot, Alfred S. Wyllie, James P. Butler, Leslie L. Vivian, Hugh W. Long, Herbert R. Hastings, E. Wright Noble, Curtis B. Dall, Victor B. Cook, Norman Weiden, Louis W. Laudick and Hoyle

Jones, Co-partners Trading and Doing Business under the Firm Name and Style of Fenner, Beane & Ungerleider, Plaintiffs,

vs.

J. M. Lee, as Comptroller of the State of Florida, Defendant

Bill of Complaint—Filed Dec. 11, 1933

To the Honorable Judges of the above styled court in equity sitting:

[fol. 11] Come now the plaintiffs, John P. Bickell, George B. Buchanan, Alfred W. Mansfield, Selden F. White, Henry Holt, William L. Meffert, Alfred S. Rogers, Timothy P. Brosnan, Harold N. Scott, John W. Jordan, George H. Ross, James A. Kiernan, Henry T. Hermes and Benjamin E. Billings, Co-partners trading and doing business under the firm name and style of Thomson & McKinnon, and Alpheus C. Beane, Charles E. Fenner, Joseph N. Carpenter, R. Browder Flinn, John L. Julian, Earl H. Hulsey, John McCorkle, Robert A. McCord, Sully C. Pecot, Alfred S. Wyllie, James P. Butler, Leslie L. Vivian, Hugh W. Long, Herbert R. Hastings, E. Wright Noble, Curtis B. Dall, Victor B. Cook, Norman Weiden, Louis W. Laudick and Hoyle Jones, Co-partners trading and doing business under the firm name and style of Fenner, Beane & Ungerleider, and bring this their bill of complaint against J. M. Lee, as Comptroller of the State of Florida, as defendant, and respectfully show unto this Court as follows:

1. That the citizenship and residence of the plaintiffs is as follows: the said John P. Bickell is a citizen of the Province of Ontario, Dominion of Canada, and resides in the City of Port Credit in said Province; the said George B. Buchanan is a citizen of the State of New York and resides in the City of Stony Point in said State; the said Alfred W. Mansfield is a citizen of the State of Illinois and resides in the City of Chicago in said State; the said Selden F. White is a citizen of the State of Illinois and resides in the City of Barrington in said State; the said Henry Holt is a citizen of the State of Indiana and resides in the City of Indianapolis in said State; the said William L. Meffert is a citizen of the State of New York and resides in the

City of Mount Vernon in said State; the said Alfred S. Rogers is a citizen of the Province of Ontario, Dominion [fol. 12] of Canada, and resides in the City of Toronto in said Province; the said Timothy P. Brosnan is a citizen of the State of New York and resides in the City of Bronxville in said State; the said Harold N. Scott is a citizen of the State of Illinois and resides in the City of Naperville in said State; the said John W. Jordan is a citizen of the State of Indiana and resides in the City of Indianapolis in said State; the said George H. Ross is a citizen of the Province of Ontario, Dominion of Canada, and resides in the City of Toronto in said Province; the said James A. Kiernan is a citizen of the State of New Jersey and resides in the City of Maplewood in said State; the said Henry T. Hermes is a citizen of the State of Illinois and resides in the City of Chicago in said State; the said Benjamin E. Billings is a citizen of the State of New Jersey and resides in the City of Morristown in said State; the said Alpheus C. Beane is a citizen of the State of New York and resides in the City of Bronxville in said State; the said Charles E. Fenner is a citizen of the State of Louisiana and resides in the City of New Orleans in said State; the said Joseph N. Carpenter is a citizen of the State of New York and resides in the City of New York in said State; the said R. Browder Flinn is a citizen of the State of New York and resides in the City of Bronxville in said State; the said John L. Julian is a citizen of the State of New York and resides in the City of New York in said State; the said Earl H. Hulsey is a citizen of the State of Texas and resides in the City of Dallas in said State; the said John McCorkle is a citizen of the State of Louisiana and resides in the City of New Orleans in said State; the said Robert A. McCord is a citizen of the State of Georgia and resides in the City of Atlanta in said State; the said Sully C. Pecot is a citizen of the State of New York and resides in the City of Forest Hills in said State; the said Alfred S. [fol. 13] Wyllie is a citizen of the State of New York and resides in the City of New York in said State; the said James P. Butler is a citizen of the State of Louisiana and resides in the City of New Orleans in said State; the said Leslie L. Vivian is a citizen of the State of New Jersey and resides in the City of Plainfield in said State; the said Hugh W. Long is a citizen of the State of New York and resides in the City of New York in said State; the said

Herbert R. Hastings is a citizen of the State of New York and resides in the City of Bronxville in said State; the said E. Wright Noble is a citizen of the State of Virginia and resides in the City of Gloucester in said State; the said Curtis B. Dall is a citizen of the State of New York and resides in the City of New York in said State; the said Victor B. Cook is a citizen of the State of New York and resides in the City of New York in said State; the said Norman Weiden is a citizen of the State of New York and resides in the City of Brooklyn, in said State; the said Louis W. Laudick is a citizen of the District of Columbia and resides in the City of Washington in said District of Columbia, and the said Hoyle Jones is a citizen of the State of Oklahoma and resides in the City of Tulsa in said State; that the defendant, J. M. Lee, who is joined herein as Comptroller of the State of Florida, is a citizen of the State of Florida and resides in the City of Tallahassee in said State, and is the duly elected, qualified and acting Comptroller of said State, and that the office of said Comptroller is located in the Capitol Building in said City and State.

2. That this is a suit of a civil nature in equity wherein the jurisdiction of this Court is invoked under Clause (a), Subdivision 1, of Section 24 of the Federal Judicial Code, on the ground that this is a suit wherein the amount in controversy exceeds, exclusive of interest and costs, the sum and value of $3,000.00, and that the rights of the plaintiffs [fol. 14] are predicated on and arise under certain sections and provisions of the Constitution of the United States hereinafter specifically alleged, and that there exists herein a diversity of citizenship between the parties plaintiff and the party defendant, in that the plaintiffs and each of them, as hereinabove particularly alleged, are citizens of States other than the State of Florida or of foreign countries, and the defendant is a citizen of the State of Florida.

3. That the plaintiffs above named and described as composing the firm of Thomson & McKinnon (and hereinbelow sometimes referred to as "the firm of Thomson & McKinnon") are engaged in the business of acting as stock brokers, with their principal office and place of business in the City, County and State of New York, and with numer-

ous branch offices in other places including the State of Florida, in which State said firm does business through branch offices located in the Cities of Jacksonville, Miami, Miami Beach, Orlando, Tampa and St. Petersburg; that the plaintiffs above named and described as composing the firm of Fenner, Beane & Ungerleider (and hereinbelow sometimes referred to as "the firm of Fenner, Beane & Ungerleider") likewise are engaged in the business of acting as stock brokers, with their principal office and place of business in the City, County and State of New York, and with numerous branch offices in other places including the State of Florida, in which State said firm does business through branch offices located in the Cities of Jacksonville, Miami, Miami Beach, Palm Beach and Hollywood; that certain members of each of said firms are members in good standing of the New York Stock Exchange and other principal and leading Exchanges in said City and in other leading cities in the United States and in certain foreign countries, which constitute and are operated as markets for stocks, bonds and commodities; that the said firms do not do any business on any Exchange in the State of Florida; that the business of said firms is primarily that of acting as agents [fol. 15] for their customers in the capacity of commission brokers, and that said firms are not engaged in the business of floating or issuing stocks or securities or of underwriting the same; that the principal business of the said stock brokerage firms which is rendered for their Florida customers, by and through their said branch offices in said State, consists of acting as their agents and brokers in the making of purchases and sales on the New York Stock Exchange (and to a considerably lesser extent on other Exchanges, all of which are outside of the State of Florida); that in addition to acting as the agent of their Florida customers in such purchases and sales, the said firms furnish in their branch offices in said State complete stock market quotation information, which is furnished by them for the benefit of their customers, following its transmission from the New York Stock Exchange and the certain other Exchanges outside of the State of Florida, by a telegraph company, at a substantial expense to the plaintiffs.

4. That in representing their Florida customers through their Florida branch offices in the purchase and sale of stocks and securities on the New York Stock Exchange,

the practice and procedure of the said two firms of brokers is almost identical, and is substantially as follows:

(a) As to a purchase of stock for a Florida customer, the initial step in the transaction is the communication by the customer, either orally or in writing, that he desires the firm to purchase for him on the New York Stock Exchange a given number of shares of a listed stock at the market price or at a designated price. A form of such a request by a customer that a purchase be made on his behalf by the firm is attached hereto and made a part hereof, marked Plaintiffs' Exhibit 1. Thereupon the employees of the firm in the Florida branch office in question communicate with the office of the firm in the City of New York by tele- [fol. 16] graph over American Telephone and Telegraph leased Morse wire, which service is leased for the exclusive use by the firm for its firm business, at a substantial expense to the plaintiff firm. Thereupon the plaintiff firm, through its employees in the New York office, proceeds to make the purchase requested in New York City, on the floor of the New York Stock Exchange, as the agent of their undisclosed principal, the Florida customer, by bidding for and obtaining an acceptance, or by accepting an offer of said stock, as instructed, and thereupon in New York City makes a Members' Contract, which is also designated as an Exchange Contract. That such contract under Article 15 of the Constitution of the New York Stock Exchange which governs and controls the trading thereon, is a contract of which the provisions and conditions of the Constitution of the Exchange and of the rules adopted pursuant thereto, constitute a part. That one of the terms of such contract, as provided by the Constitution of the said Stock Exchange, is that such contract shall be reduced to writing and exchanged between the seller and the purchaser on the day that the same is made. Accordingly, on the day of such transaction a written contract known as an Exchange Contract is passed between the parties, in the City and State of New York. A form of such Exchange Contract is attached hereto, made a part hereof and marked Plaintiffs' Exhibit 2.

A further provision of such initial contract, as required by the Constitution and rules of said Exchange in such a transaction, is that the seller shall make actual delivery of such stock to the purchaser by 2:15 P. M., New York City time, the second delivery day after the date of the trans-

action, and that the purchaser shall pay the contract price therefor by such time. Each day that the Exchange is [fol. 17] open, except Saturday, is a delivery day.

As required under the Constitution and rules of said Exchange, and as a part of the contract resulting from such purchase transaction, the seller of said stock must deliver to the buyer thereof, at the time of delivery, a "sales ticket", which is a paper containing the date, the name of the seller, the name of the purchaser to whom the delivery is to be made, the number of shares and the nature of the security to be transferred, the price per share and the total consideration therefor; and there is thus required to be, and in fact in all such instances there is attached to such "sales ticket", before the same is delivered by the seller of such stock to the purchaser thereof, all stamps which as an excise on said transaction, are required by the laws of the United States and by the laws of the State of New York in which the said sale and transaction takes place. That by virtue of a Federal Stamp Tax Act (26 U. S. C. A. Sec. 901, being Sec. 800 of the Revenue Act of 1924, as amended by the Revenue Acts of 1926 and 1928) the terms and provisions of which, in respect to the requirement of revenue stamps in connection with sale and transfer of stocks, being almost exactly followed by the Florida statute hereinbelow referred to, require the use of stamps in a certain amount on each such transaction between the seller and the buyer, and the said stamps are placed on such "sales ticket" in full compliance therewith, and in compliance with the Rule of the New York Stock Exchange (Chapter III, Section 10) which reads in part as follows: "Each delivery of securities subject to a tax on transfer or sale must be accompanied by a sales ticket, stamped in accordance with the regulations of the United States and the State of New York. * * *"

That by a New York Statute (Sec. 270 of the Tax Law of the State of New York) a similar stamp tax is required by [fol. 18] that State as an excise tax upon such sales and deliveries made within said State, or on contracts or memoranda of sale which are made and delivered by the seller to the purchaser within that State, and that stamps are placed on the "sales ticket" delivered as aforesaid in connection with such a transaction taking place in the City of New York, in full compliance with the said New York State Stamp Tax Law, and in compliance with the aforesaid rule of the Exchange. An example of such "sales ticket" is shown by

one such "sales ticket" which is attached hereto, made a part hereof, and marked Plaintiffs' Exhibit 3, which was delivered to the said firm of Thomson & McKinnon in an actual transaction on October 17, 1933, and to which there were affixed and cancelled, as now appearing thereon, such documentary stamps as were required by the said Federal and New York State Stamp Tax Laws. Said stamped "sales tickets" do not come into Florida.

In the case of all such purchases and sales, however, delivery of the stock is made in the State of New York between the floor members or brokerage firms who take part in such transaction; that such delivery under the rules of said Stock Exchange is made simultaneously with payment in full, and is made either by the actual delivery of certificates of stock or by corporate transfer thereof; that the brokerage firm purchasing said stock in New York City completes the purchase transaction by receiving delivery, in New York City, as the agent of and for and on behalf of the Florida customer who requested such purchase to be made for him.

That following the making of such purchase transaction on the floor of said Exchange, the employees of the said brokerage firm in New York City communicate by telegraph over said private wire facilities, with their employees in [fol. 19] the branch office in Florida, in which said request for the purchase originated. In the latter office said telegram is received in original and copy form, and though under no obligation with the customer by contract or otherwise to deliver such telegraphic communication to the customer, the employees of the firm in said Florida branch office customarily deliver to the purchasing customer the original or a carbon copy of the telegraphic message showing that his request for such purchase has been complied with by the said firm of brokers; that such telegraphic notice sets forth the date of its receipt and information that a certain number of shares of a certain security have been bought at a certain price, and it contains the number of the customer's account in said brokers' office, and the time of the day at which the transaction was made. A form of such telegram is attached hereto and made a part hereof, marked Plaintiffs' Exhibit 4. As an additional notification by such brokerage firm of New York City to its customer who placed his request for a purchase with the Florida branch of the firm, there is mailed to him from the New York office of said

firm on the day of the transaction, a form notice showing that the requested transaction was made, and giving the details thereof, including the name of the seller, the number of shares, the name of the security, its price per share, the amount of the commission, the total consideration and the name of the customer. A form of such mail report from the brokerage firm to its principal is hereto attached, made a part hereof and marked Plaintiffs' Exhibit 5.

(b) As to a sale of stock for a Florida customer; the initial step is a request made by the customer in Florida, either orally or in writing, to the employees of the Florida [fol. 20] branch office that the firm sell on the New York Stock Exchange a given number of shares of a listed stock at the market price or at a certain designated price. A form of such request for the sale of stock is attached hereto and made a part hereof, marked Plaintiffs' Exhibit 6. A telegraphic communication, as alleged above in the case of a purchase, is made by the Florida employees of the firm to its New York office and a transaction as in the case of a purchase is thereupon made by the employees of the New York firm, in New York City, on the floor of the Exchange whereby a similar contract is made by said brokerage firm for and on behalf of the Florida customer as their undisclosed principal, with a fellow member or authorized trading firm on said Exchange, which is likewise representing some undisclosed purchaser-principal. As a result of the transaction and contract thus made, and by its terms as contained in the Constitution and rules of the said Exchange, a written contract or memorandum known as an "Exchange Contract" is delivered in New York City by the plaintiff firm to the purchaser broker or brokerage firm on the day of the transaction, which sets forth the name of the purchasing firm, the number of shares and nature of the security, the price per share and the total consideration. An example of such an Exchange Contract is hereto attached, made a part hereof and marked Plaintiffs' Exhibit 7.

Following the making of such floor trade or transaction on the Exchange in New York City, the employees of said firm in that City notify the employees in the Florida branch, to which the customer made such request for the sale, that such request has been complied with. The telegraphic communication to the Florida branch office of the firm sets forth [fol. 21] the information that there has been sold the re-

quested quantity of the named stock at a certain price, and contains the customer's account number and the time and date of the transaction. Such telegram is taken off the wire by typewriter in the firm's Florida branch office in question by the employees of the firm, and it is then customary for the Florida branch office to notify the customer that his requested sale has been made in New York City. This notification is given to him either by informing him orally or by delivering to him either the original or a carbon copy of the telegraphic report to such effect, received from the New York office. An example of such notice or telegraphic report, which is complete and similar in all material respects to those which are sent from New York to the Florida branch office in all such transactions, is attached hereto, made a part hereof and marked Plaintiffs' Exhibit 8.

The customer may or may not receive such information from the branch office, as there is no contract or other obligation to deliver the same to him, and by reason thereof it has always been and is now the practice of the New York office, on the day of each such transaction, to mail to the Florida customer a brief report showing that they have complied with his request for such sale. The form of notice thus mailed to the customer sets forth the name of the person to whom sold, the number and kind of securities, the price per share and the total price, plus the additional figures showing the amount of the commission, the amount of the New York State and Federal stamp taxes to be paid thereon, the net proceeds of the sale, and the name of the Florida customer. An example of such a report which is [fol. 22] mailed by the brokers from New York to their Florida customers, is attached hereto, made a part hereof and marked Plaintiffs' Exhibit 9.

That in connection with the actual delivery by 2:15 P. M. on the second delivery day following such transaction, which delivery is made as aforesaid in all such purchases and sales, the plaintiff firm as seller delivers in New York City to the purchaser there a "sales ticket" after first affixing thereto and cancelling documentary stamps in the form and amount required in connection with said transaction by the above mentioned Federal and New York State Excise or Stamp Tax Laws; an example of such "sales ticket" (the stamps, however, not appearing thereon) is hereto attached, made a part thereof and marked Plaintiffs' Exhibit 10.

That as a final step in the sale transaction a delivery of the stock is made in New York City (by actual delivery of the certificates or by transfer on the corporate records) by the plaintiff firm as the customer's agent and for and on his behalf to the other party to said sale, to-wit: the purchaser.

5. That the method and procedure as above outlined, by which purchases and sales of securities listed on the New York Stock Exchange are made in the City of New York for their Florida customers, is that which is employed in the vast majority of transactions for their said customers, and that where such sales and purchases are made on different bases which are recognized and permitted by the Constitution and Rules of the New York Stock Exchange, such differences are immaterial and bring about a different contact and different time of delivery and payment without any [fol. 23] material change in the manner of handling the deal, in that all such New York Stock Exchage transactions are made and completed by contract and delivery in the State of New York, and upon the delivery of a "sales ticket" or memorandum which passes between the buyer and the seller in that State and to which the required Federal and New York State revenue stamps are duly affixed. That in handling purchases and sales of securities on Exchanges other than the New York Stock Exchange, the plaintiff firms handle and accomplish them in all material respects similar to the manner hereinabove outlined as being the method employed by them on the New York Stock Exchange.

6. That except as to arrangements which the Florida branch office makes with certain of its Florida customers to act as their agents and brokers for the purchase or sale of stock on a marginal basis, as hereinbelow alleged, the arrangement made between the brokers and such customers is a simple agency contract whereby the said firms of brokers undertake for their Florida customers to act on the various Exchanges outside the State of Florida as agents of undisclosed principals in purchasing and selling stocks, securities and commodities which their customers shall request them to buy or sell, as the case may be. That by express understanding with the customer, and by custom and usage in the trade, and through the necessity of complying with the rules and requirements of the various Exchanges on which

such transactions are made, said firms of brokers on all such transactions (except the marginal transactions hereinbelow mentioned) require that a customer requesting them to purchase for him any stocks or securities, shall first deposit with said firms of brokers an amount sufficient to pay the full purchase price thereof plus the commission and expenses incident to the transaction. And, correspondingly, [fol. 24] where a purchaser request said firms to make a sale of stocks or securities on his behalf, he is first required to furnish to said firms of brokers the stocks or securities which can be delivered by the plaintiff brokers on making such sale, or to deposit with said firms of brokers an amount sufficient to cover the cost of stock which will be necessary to obtain and deliver in said transaction, and also to cover the commission and expense of the transaction.

7. That so-called marginal accounts are granted to customers, but are limited to dealings in stocks in excess of a certain value, which are duly and regularly listed stocks on the principal Stock Exchanges. That an example of such marginal account agreement which is made between the said firm of Thomson & McKinnon and its Florida customers, is shown in the printed "Customer's Agreement and Consent" which is attached hereto and made a part hereof, and marked Plaintiffs' Exhibit 11, reference whereto is hereby prayed as to the provisions thereof. That the terms, provisions and conditions therein contained are in substance similar to the arrangements between the said firm of Fenner, Beane & Ungerleider and its Florida customers as to such marginal accounts. That in purchasing and selling stocks for the customer on the marginal basis, the stock is held by the brokers for their protection, and an amount of money is required to be kept on deposit with the brokers, sufficient to comply with the Constitution and Rules of the New York Stock Exchange relating thereto, and that transactions made for such a customer on a marginal account are not in any substantial respect different from the purchases and sales which the said brokers make for customers not having such marginal accounts, except that instead of requiring a sufficient monetary deposit to cover the full price of stocks to be pur- [fol. 25] chased and sufficient to cover the full price of stocks to be delivered on sales, the balance between such amounts and the marginal deposit is loaned or advanced to

the customer against the stocks of his account held by the broker or other lending agency.

8. That the representation of the Florida customers contemplates and requires in all purchases and sales, whether on such a marginal basis or otherwise, that an actual delivery of stock be made at the place where the sale is made, outside the State of Florida. That where a sale is made by the plaintiff brokers for Florida customers, no contract for such sale is ever made or delivered to the purchaser in the State of Florida, and no memorandum of sale is ever made or delivered to the purchaser in the State of Florida, and no delivery of any such stocks or securities is ever made to the purchaser in the State of Florida. That where the said firms of brokers represent Florida customers in the purchase of stocks and securities on such Exchanges outside the State of Florida, they do not make or receive any contract for such purchasers within the State of Florida, and no memorandum of sale is delivered by the seller to the said plaintiff brokers or their customers in or within the State of Florida, and there is not delivered to the said brokers in the State of Florida any shares of stock or certificates or other evidences of delivery or transfer of title to any such stocks so purchased by them outside the State of Florida.

9. That the complete accounting and book records of the transactions of said firms for their Florida customers are kept and maintained in the New York City offices of said firms and accurately reflect the balances to the credit of the customers, and any and all securities held for their account; that the records of such matters as contained in the Florida branch offices of said firms are not complete and [fol. 26], are merely approximations for the convenience and benefit of said customers; that monies held by the brokers for the account of said customers are held in New York or where certain portions thereof are on deposit in banks in the cities where the said Florida branches are located, the same are subject to disposition by the New York offices of said firms.

10. The handling of such purchases and sales by the said firms of brokers for Florida customers requires the trans-

mission of information and intelligence relating thereto from the State of Florida to the State of New York over leased facilities of telegraph companies likewise engaged in interstate commerce, and the said requests for purchases and sales and the reports of the resultant purchases and sales are substantially the same information which the person in Florida would exchange by telegraph or telephone between Florida and New York, should he desire to make a purchase on the New York Stock Exchange without using the convenience and facilities afforded by the branch offices of said firms in his State.

11. That a substantial portion of the Florida business of said firms is for customers who do not use marginal accounts: That in a large majority of all such purchases and sales for customers not using marginal accounts, the stock purchased or sold is actually transported between the States of Florida and New York. In the case of such purchases, the stock is forwarded to the purchaser by the broker following the purchase of the same on the foreign Exchange, and in the case of such sales, the stock is forwarded from Florida to New York to comply with delivery requirements in connection with the sale to be made in New York State. That in representing its customers in such transactions and in sending such stocks and securities between Florida and New York, the said brokerage firms [fol. 27] are performing a service for their customers which is covered by the commission charge made for the sale or purchase transaction in question, and that in so transmitting said messages and information from Florida to New York, and from New York to Florida, and in so shipping and transferring said stocks or securities for their customers between those States (and between Florida and other States in which Exchanges so dealt on are located) the said firms of brokers are engaged in commerce between the States and in commerce between the State of Florida and certain foreign countries.

12. That the 1931 Session of the Legislature of the State of Florida enacted Chapter 15,787 (Section 1279, Subsections 111-117, C. G. L., Fla. 1932 Supp.) entitled "An Act Levying and Imposing an Excise Tax on Documents to Raise Revenue for the Support of the State Government; and Prescribing Penalties for Failure to Pay Said Tax". That by the third paragraph of Schedule A of Section 2

of the said Act there is imposed a stamp tax, which by that portion of the Act, it is provided shall apply to actual sales and transfers of stock or to contracts entered into between sellers and purchasers thereof, or to memoranda of sale which are delivered by the seller to the purchaser. The said paragraph of the Act likewise fixes a penalty, by providing that any seller liable to pay the tax or his agent or broker who carries out such a sale or delivers to the purchaser any memorandum of sale, without having the proper stamps affixed thereto, with intent to evade the provisions of the Act, shall be guilty of a misdemeanor and upon conviction shall be punished accordingly. By Section 7104, C. G. L., Fla. 1927, the punishment for such misdemeanor is provided to be a fine not to exceed $200.00, or imprisonment not to exceed ninety (90) days, or both, in the discretion of the Court.

[fol. 28] 13. Section 2 of the said Florida Stamp Tax Statute provides that the administration of the Act shall be invested in the Comptroller of the State of Flor-da, who is thereby directed to administer and enforce the taxes levied and imposed by the Act. The said Comptroller by such Section of the Act is given power to enter the premises of any taxpayer and examine the taxpayer's records bearing upon the matters to which the Act pertains.

14. That when the said Stamp Tax Act went into effect in the year 1931 the then Comptroller of the State of Florida (to whose office the defendant Comptroller J. M. Lee succeeded in January, 1933) construed said Act as not applying to the sales or purchases of stock which were made outside the State of Florida as hereinabove alleged, through brokers such as the plaintiffs, nor to any notices or any written requests for purchase or the sale of stock, given by the customers to said brokers, nor to any written statements given by such brokers to their Florida customers, advising the latter that contracts had been made in New York City and there executed for them, nor to any other accounts or papers or memoranda or records of the said brokers made or used in the State of Florida or exchanged between them as agents and their Florida customers as principals. That, accordingly, no tax was required to be paid by reason of or as a result of the pur-

chases and sales of stocks which the plaintiff brokers made on various Exchanges outside the State of Florida for their Florida customers.

14 (a). That plaintiffs further allege and show unto this Court that the meaning and intent of the said Florida Stamp Tax Act and the proper construction thereof in respect to the matters referred to in this bill, was and is that such tax shall apply only to any sale of stocks which sale actually takes place in the State of Florida, or to any contract for the sale of stock, which contract is made and [fol. 29] delivered in the State of Florida by the seller to the purchaser of the stock, or any memorandum of sale of a contractual nature which is actually delivered within the State of Florida by the seller of the stock to which it refers to the purchaser thereof and which memorandum passes between the said parties to the sale as an instrument obligating the seller on the one hand to make delivery and which has the effect in the hands of the purchaser of a binding instrument by virtue of which he can enforce delivery to him of such stock. Plaintiffs further show unto the Court that written notices or memoranda or other papers delivered by a purchaser or seller of stock to his agent, requesting such agent to make a purchase or sale on that principal's behalf, or which are delivered by the agent to his principal showing that the requested sale or purchase has been made outside the State of Florida with a third party by the agent for the principal as requested, or records which the agent may keep of such purchases and sales made by him outside the State of Florida, are not taxable under the said Florida Stamp Tax Act, for the reason that such papers and memoranda are not within the class of documents upon which said statute imposes a tax, in that among other things they are not papers or instruments which pass from the seller to the purchaser in connection with a sale of stock, and for the reason that the language of the statute and its proper construction excludes such papers and memoranda of sales from taxation thereunder.

15. That on the 23d day of November, 1933, the defendant Comptroller of the State of Florida appeared at the branch offices of each of the plaintiff brokerage firms located in Jacksonville, Florida, and demanded that documentary stamps, in an amount based upon the number of [fol. 30] shares of stock involved, be placed upon all written

requests which the customers, as principals, should make of the said firms of brokers as their agents to either buy or sell stock for them on Exchanges outside the State of Florida, and on all of the telegraphic messages which the employees of the Florida branch offices of the said brokerage firms should receive from the New York offices of the firms and deliver to the Florida customers, by which the said firms, as agents, informed the said customers, as principals, that the requested purchase or sale had been made as the customer had directed. That the said defendant Comptroller then took, and since that time has taken, the position that the said communications between the said brokers and their principals are taxable under said Act, and that the records which said branch offices keep of the sales and purchases their firms made, in States other than the State of Florida, for and at the request of their Florida customers, are taxable under said Act, and the said Comptroller is threatening to enforce the payment of such taxes in such manner, by virtue of the enforcement and penalty provisions of said Act.

16. That if the said Florida Stamp Tax Act be construed according to the contentions of the defendant Comptroller of the State of Florida, it violates the provisions of the Constitution of the United States in the following respects: the levy and collection of such tax, as so demanded and threatened by the defendant Comptroller of the State of Florida, from the Florida customers of the plaintiff brokers, or by requiring the same to be paid by the plaintiffs under said Florida Documentary Stamp Tax Act of 1931, under the circumstances and conditions which are hereinabove and hereinbelow alleged in this bill of complaint, render said Act unconstitutional as a violation of the Commerce Clause of the United States Constitution (Article I, Section 8, Clause 3) by constituting a direct burden on the interstate commerce in which the plaintiffs are engaged, as hereinabove alleged, and as a violation of the First Section of Article 14 of the Amendments to the Constitution of the United States, as depriving the plain-
[fol. 31] tiffs of their property without due process of law, and by denying to them within the jurisdiction of the State of Florida the equal protection of the laws.

17. That if the said Florida Stamp Tax Act be construed according to the contentions of the defendant Comptroller

of the State of Florida, it violates the Constitution of the State of Florida, in that wherein said Act purports to require the levy and collection of such a tax from the customers of the plaintiff brokers, or requires that the same shall be paid by the plaintiffs, under the circumstances and conditions hereinabove and hereinbelow set forth in this bill, and in the manner and respects as to which the same has been demanded and threatened by the said Comptroller, it violates the Twelfth Section of the Declaration of Rights of the State of Florida by depriving plaintiffs of their property without due process of law, and the First Section of Article 9 of the Constitution of said State as levying a tax in the guise of an excise tax, which is in effect a property tax without the equal rate of taxation and just valuation of the property taxed as guaranteed by such provision of said State Constitution, and by purporting to levy an excise tax on acts and transfers beyond the jurisdiction of the State of Florida, and as to which it has no constitutional power to so tax, and by violating the Sixteenth Section of Article 3 thereof, by failure to have the true nature of such tax expressed in the title thereof.

That said defendant Comptroller of the State of Florida has threatened as aforesaid to proceed to enforce said Act by requiring the plaintiffs or someone on their behalf to pay such tax by affixing stamps upon the said communications between plaintiffs as agents and their customers as principals, and upon the records which they have kept for the benefit of their customers of the purchases and sales of stocks and securities outside the State of Florida which they have made for their said customers, and that said Comptroller has ad-
[fol. 32] vised the plaintiffs through certain of their employees in the State of Florida and through their counsel in said State that said Act will be enforced by him retroactively as well as in the future unless by December 9, 1933, the plaintiffs shall have paid such tax on all items so contended by the Comptroller to be taxable thereunder, beginning as of November 23, 1933, and unless such payments be continued.

18. That said demand is made notwithstanding the rule of the New York Stock Exchange (similar in substance to such rules of other Exchanges outside the State of Florida on which the plaintiffs deal for Florida customers as aforesaid), which provides as follows: "No member shall, di-

rectly or indirectly, by agreement or otherwise, assume or bear for his own account or relieve his principal from any part of any stamp tax imposed by the United States or by any State on transfers or sales of securities." That said rule is Rule No. 12 of Chapter VII of the rules of said Exchange. That for the plaintiffs to comply with the demands of the defendant Comptroller by paying said tax would be a violation of said rule for which they could not be excused. That for the plaintiffs to require as a condition of representing principals in such transactions that their said Florida customers pay such tax as demanded by the said Comptroller would result in such loss of business that they would be unable to maintain and operate branch offices in the State of Florida, and would be forced to cease doing such business in said State, and that a like effect would be had upon the business of all other stockbrokers similarly situated engaged in representing Florida customers through branch offices in the State of Florida.

19. That plaintiffs have no plain, adequate or complete remedy at law, in that even if there should exist on the law side of this Court a right in the plaintiffs to recover back amounts paid through such stamp taxes in the event the [fol. 33] same should be found to have been illegally levied or collected, the said remedy would require a multiplicity of suits, in that the payment of each such tax would be a separate transaction, and in that the nature of the tax is one which would require of plaintiffs hundreds of tax payments daily, and that the requirement to pay such taxes would continue from day to day; that said remedy would not be plain, adequate or complete, in that the loss and damage which would be suffered by the plaintiffs, by reason of the enforcement of said Stamp Tax Act, as threatened, could not be measured by the amount of taxes so paid, but would be measured by the loss of their business in the State of Florida and the value of the goodwill of their customers which would be lost thereby, and by plaintiffs being deprived of conducting and increasing their business in the State of Florida, and would be measured by the loss upon their property investment in said State, all of which loss thus occasioned would amount to hundreds of thousands of dollars.

20. That no plain, adequate or complete remedy at law could be afforded by permitting an arrest of the plaintiffs or their Florida servants to be made in the State of Florida,

and by thereupon testing the legality thereof, in that, under the construction of said Act placed thereon by the Comptroller, the violations thereof, for which such arrests might be made, could number several hundred each day, and the enforcement of said Act by arrest would cause a multiplicity of such suits; that to test the legality of any such criminal prosecution could reasonably require one or more years for its completion, and would leave plaintiffs or their servants and employees subject to daily hourly arrests in such manner that it would be impossible for them to continue their business under such circumstances.

21. That the multiplicity of suits, both civil and criminal, [fol. 34] to which the plaintiffs would be required to resort to protect themselves and their servants in the conduct of their said business, in order to test the validity of the Act, if said Act should be enforced upon the construction placed thereon by the defendant Comptroller, would render it unprofitable for plaintiffs to continue in the conduct of their said business and would make it impossible for their employees to continue to perform their duties through being constantly harassed by multiple arrests, and would deprive their Florida customers of the representation which they are being afforded by the plaintiffs, and would cause undue expense and hardship upon the plaintiffs.

22. That the enforcement of said Act against the plaintiffs, as the same is construed by the defendant Comptroller, would result in irreparable injury to the plaintiffs by reason of the matters and facts alleged in this bill, and particularly in that the Florida business of the plaintiff brokerage firms is of substantial value to them far in excess of $3,000.00, and that said Florida business would be destroyed; that by being required to terminate their business in Florida through such enforcement of said Florida Stamp Tax Act, the plaintiffs would likewise suffer irreparable injury in the loss of goodwill, in that they would not be able, as formerly, to serve their customers from other States while such customers are visiting in Florida, as is done annually by many of their valued customers, and by being unable to serve their customers who are residents of the State of Florida, and by loss in value of the properties in which they have invested and which are being used by them in the conduct of their business in Florida, the total

value of which runs into hundreds of thousands of dollars and a considerable portion of which property could not profitably be transported for use elsewhere nor profitably put to any other use than that to which it is being put by them in their business.

[fol. 35] 23. That the said Comptroller having threatened as aforesaid, to enforce said Act in the manner hereinabove alleged, will proceed to avail himself of the provisions of the laws of the State of Florida for the enforcement of collection of taxes, and the provisions of said Stamp Tax Act as to the collection of taxes required to be paid thereunder, and the penalties provided for therein, unless enjoined by this Honorable Court.

24. That by reason of the matters and things hereinabove alleged, and by reason of the fact that the construction of said Act placed thereon by the Comptroller of the State of Florida, would require the payment of taxes daily during the time between the filing of this suit and the hearing and determination, after due notice to the defendant, of an application for the interlocutory injunction hereinbelow prayed for, and would leave the plaintiffs' employees in their said Florida branch offices subject to multiple arrests and criminal prosecutions pending said hearing for an injunction, irreparable loss and damage will result to the plaintiffs unless a temporary restraining order should be granted as hereinbelow prayed for.

Wherefore, the plaintiffs pray as follows:

1. That upon the filing of this bill and the presentation thereof to this Court, an order be entered herein, convoking a three-judge Court for the hearing of the application for the interlocutory injunction herein prayed for, and for the hearing of this cause on final hearing, as provided for by Section 266 of the Judicial Code (Title 28, U. S. C. A. Sec. 380), by virtue of the showing in this bill that the same seeks an interlocutory injunction restraining the enforcement of a Statute of the State of Florida (Chapter 15,787, Laws of Florida 1931) by restraining the action of the defendant Comptroller of the State of Florida, an officer of said State, in the enforcement of said Statute, [fol. 36] upon the ground that the same violates provisions of the Constitution of the United States.

2. That forthwith upon the filing of this bill, a temporary restraining order be entered herein ex parte, to remain in force until the hearing and determination of the application for interlocutory injunction hereinbelow prayed for, and which temporary restraining order shall restrain the defendant, J. M. Lee, as Comptroller of the State of Florida, and his agents, servants, employees and attorneys, from enforcing the said Florida Statute (Chapter 15,787, Laws of Florida, 1931) against the plaintiffs in any manner whatsoever with respect to the matters and things alleged in this bill of complaint, by the collection of taxes or the imposition or enforcement of penalties thereunder.

3. That an interlocutory injunction be made and entered pendente lite in this cause, enjoining and restraining the defendant, J. M. Lee, as Comptroller of the State of Florida, and his agents, servants, employees and attorneys, from enforcing the Florida Stamp Tax Act, being Chapter 15,787, Laws of Florida, 1931, against the plaintiffs, through demanding or requiring that any tax provided for under said Act be paid with respect to or for or by reason of any written communication, document or memorandum which may have been or may hereafter be delivered, passed or exchanged by the plaintiff brokers or their employees to their Florida customers, or by their said customers to the plaintiffs or any of their employees, in connection with or in any manner related to the transactions for the purchase and sale of stocks or securities on Exchanges located outside of the State of Florida, which have been, or hereafter shall be made by the plaintiff brokers, or any of their servants or employees, for or on behalf of any customers, who in Florida have requested or ordered, or shall request or order the same to be made, and from levying [fols. 37-39] any such tax provided for or contemplated by said Act, upon any books, ledgers, records, or memoranda in the possession of the plaintiffs or their employees in the State of Florida, relating to their acts and business in connection with the purchase or sale of any stocks or securities on Exchanges located outside the State of Florida for or on behalf of their customers, and which purchases or sales have been or shall be made by them in accordance with the requests, directions or orders to them by their customers; and restraining the said defendant and his agents, employees and attorneys, from enforcing or causing to

be enforced any penalties provided by said Act against the plaintiffs or any of their servants, agents or employees.

4. That upon final hearing the interlocutory injunction herein prayed for be made permanent.

5. That the plaintiffs be granted such other and further relief in the premises as to the Court shall seem meet and proper.

Shutts & Bowen, by (Signed) Charles A. Carroll,
Attorneys for Plaintiffs.

Duly sworn to by E. W. Griffin and Kingman Moore. Jurats omitted in printing.

PRIVATE WIRE Time

THOMSON & McKINNON

Nov 8 1933

BUY 100 USSTEEL

43

#2437

JOHN JONES

5
1033 AMF

PLAINTIFFS' EXHIBIT 1 TO BILL OF COMPLAINT

No. 71 New York 193

STOCK CLEARING CORPORATION (Night Clearing Branch)

For Account of THOMSON & MCKINNON

Receive From
(Deliverers Name and Number Stamp)

BROKER	Line No.	RECEIVE FROM	SHARES	SECURITY	PRICE	AMOUNT
	1	BROWN & BLACK	100	X U S STEEL	46	4600 00 1

Deliverers Line No.

PLAINTIFFS' EXHIBIT 2 TO BILL OF COMPLAINT

No. 20 New York, Oct 17 1933 19

M. J. MEEHAN & CO. 61 Broadway
Subject to the Revenue Act of 1921 and Regulations made in accordance therewith.

SOLD TO

BROKER	Line No.	DELIVER TO	SHARES	SECURITY	PRICE	AMOUNT
	292	THOMSON 1	00	C V 36		3600 00 5 00

426

Receivers Line No.

U S Internal Revenue Documentary Stock Transfer Stamp 5 dollars

M J M E H A N & Co

State of New York 5 4 4 Stock Transfer Tax

PLAINTIFFS' EXHIBIT 3 TO BILL OF COMPLAINT

29

PRIVATE WIRE Time_____

THOMSON & McKINNON

November 8, 1933 19___

Bought 100 X. 43
#2437
127Amf

PLAINTIFFS' EXHIBIT 4 TO BILL OF COMPLAINT

Stock
Department

THOMSON & McKINNON
BROKERS
11 Wall Street

New York,_____193

We have this day bought for your account and risk on the New York Stock Exchange

BROKER	Line No.	OF WHOM BOUGHT	SHARES	ABBREV.	DESCRIPTION	PRICE	AMOUNT	COMM.			TOTAL AMOUNT	FOR WHOSE ACCOUNT
	1	BROWN & BLACK	100	X	U S STEEL	46	460000	1500			461500	JOHN DOE

E. & O. E.

Thomson & McKinnon

Per_____

PLAINTIFFS' EXHIBIT 5 TO BILL OF COMPLAINT

PRIVATE WIRE Time_____

THOMSON & McKINNON

Nov. 8 1933.

SELL 100 US STEEL 43 1/4

#2185

William R Smith

#116
1022A

PLAINTIFFS' EXHIBIT 6 TO BILL OF COMPLAINT

No. 71 New York,_____193

STOCK CLEARING CORPORATION (Night Clearing Branch)

For Account of THOMSON & McKINNON

Deliver to_____
(Receivers Name and Number Stamp)

BROKER	Line No.	DELIVER TO	SHARES	SECURITY	PRICE	AMOUNT	
	1	SMITH JONES	100	X U S STEEL	461/8	461250	1

Receivers Line No.

PLAINTIFFS' EXHIBIT 7 TO BILL OF COMPLAINT

PRIVATE WIRE Time_____

THOMSON & McKINNON

November 8, 1933 19____

Sold 100 X 43 1/4

#2185

1103amf

PLAINTIFFS' EXHIBIT 8 TO BILL OF COMPLAINT

Stock Department

THOMSON & McKINNON
BROKERS
11 Wall Street

New York_____193

We have this day SOLD for your account and risk on the New York Stock Exchange

BROKER	Line No.	TO WHOM SOLD	SHARES	ABBREV	DESCRIPTION	PRICE	AMOUNT	COMM.	STATE	FEDERAL	TOTAL AMOUNT	FOR WHOSE ACCOUNT
	1	SMITH JONES	100	X	U S STEEL	461/8	461250	1500	400	500	458850	RICHARD ROE

Thomson & McKinnon

E. & O. E.

Per_____

PLAINTIFFS' EXHIBIT 9 TO BILL OF COMPLAINT

No. 71

New York,_____193

THOMSON & McKINNON
11 Wall Street New York

Subject to the Revenue Act of 1926 and Regulations made in accordance therewith.

SOLD TO_____

BROKER	Line No.	DELIVER TO	SHARES		SECURITY	PRICE	AMOUNT
1		SMITH JONES	100	X	U S STEEL	461/8	461250

Receivers Line No.

PLAINTIFFS' EXHIBIT 10 TO BILL OF COMPLAINT

[fol. 44] PLAINTIFFS' EXHIBIT 11 TO BILL OF COMPLAINT

Thomson & McKinnon

Customer's Card

Form 64

Date —— —, ——.

Code: —.

Name of Customer: —— ——.

Business Address (No.): —, (Street): —, (City and State): —.

Residence Address (No.): —, (Street): —, (City and State): —.

Business Telephone No. —. Residence Telephone No. —.

Occupation (Name of concern, nature of its business and position held): —.

All communications to the undersigned are to be sent to —.

Customer's Agreement and Consent

Messrs. Thomson & McKinnon.

DEAR SIRS: In consideration of your opening an account with the undersigned, or continuing an account with the undersigned in case such an account has been heretofore opened, and for other valuable considerations, it is agreed between us and the undersigned consents as follows:

1. Every transaction is subject to and in accordance with the constitution, by-laws, rules, regulations, directions, requirements and customs (including all changes, amendments or additions therein or there to which may affect such transaction) of the exchange, board of trade or other market on which such transaction is executed or is intended by you to be executed and of the clearing corporation, clearing house or other association, body or institution performing similar functions connected therewith, as well as of all committees, boards and other bodies, officials and authorities thereof, or if any transaction is not executed or intended by you to be executed on any such exchanges, board of trade or other market, then such transaction shall

be subject to and in accordance with the usages and customs prevailing among brokers with respect to similar transactions.

2. Every transaction involving future delivery is entered into with the distinct understanding that actual delivery is contemplated and intended.

3. You shall not be required to execute any order or to comply with and direction of the undersigned if in your opinion the state of the account or accounts of the undersigned does not justify such execution or compliance.

4. Whenever you may have in your possession or under your control, stocks, bonds or other evidences of debt of a corporation, company or association, or other securities, belonging to the undersigned or deposited with you by or for the account of the undersigned, on which you have a lien for indebtedness due to you by the undersigned, then without notice to the undersigned, you may pledge the same [fol. 45] or any part thereof for the amount due to you thereon or for more or less than said amount, either separately or together with other securities, and/or you may loan the same or any part thereof either separately or together with other securities. Any or all securities held by you as collateral or margin in connection with any "short" sale or sales for the account of the undersigned, may without notice to the undersigned be pledged by you as security for any amount either separately or together with other securities and/or may be loaned by you either separately or together with other securities.

5. Whenever you shall deem it necessary for your protection by reason of insufficiency of margin or otherwise, then you may for the account of the undersigned, without demand for additional margin, without tender, without advertisement and without notice to the undersigned, all of which are hereby waived:

(a) sell any or all securities held or carried by you for the account of the undersigned, and/or sell or contract to sell any or all commodities which you have purchased or contracted to purchase for the account of the undersigned; and/or

(b) purchase any or all securities necessary to repay loans of securities in connection with "short" sales made

by you for the account of the undersigned, and/or purchase or contract to purchase any or all commodities which you have sold "short" or contracted to sell "short" for the account of the undersigned;

and any or all such sales, purchases and contracts to sell or purchase may be made on any exchange, board of trade or other market, at any broker's board or at any public or private sale. If any such sale be at any brokers' board or at public auction, you may yourselves purchase thereat, free from any right of equity or redemption of the undersigned, which is hereby waived and released. No demand, tender, advertisement or notice, which may be made or given by you, shall be deemed a waiver of your right to take any action which you are herein authorized to take without demand, tender, advertisement or notice.

6. Any and all securities, commodities, contracts for the purchase or sale of commodities, credit balances and other property held or carried by you for the account of the undersigned, including securities held for safekeeping, shall constitute collateral security for any and all of the obligations of the undersigned to you, however arising, and in whatever account appearing and you may without notice to the undersigned transfer any and all securities held by you for safekeeping to any account in which there is a debit balance representing indebtedness of the undersigned to you, to be held as margin in such account. Whenever the undersigned shall carry more than one account with you, you may at any time without notice to the undersigned charge any one or more of said accounts with any sum upon crediting any other of said accounts with the same sum.

7. Interest on debit balances in every account of the undersigned is to be charged by you, and in addition you may charge to the undersigned a reasonable commission for the use of your credit in connection with any indebtedness incurred by you in whole or in part for the account of the undersigned or in connection with the financing of transactions for the undersigned, and the undersigned will be liable to you for all amounts so charged.

[fol. 46] 8. In case you shall sell for the account of the undersigned any securities and the undersigned shall fail

to deliver such securities to you in time to enable you to make delivery thereof to the purchaser within the time required for such delivery, or in case you shall be required or shall consider it advisable (whether by reason of the requirements of any exchange, board of trade, other market or otherwise) to replace any securities theretofore delivered by you for the account of the undersigned with other securities of like or equivalent kind and amount, then in any such event you may without notice to the undersigned, borrow for the account of the undersigned other securities of like or equivalent kind and amount and deliver the same to such purchaser or other party to whom delivery is to be made and you may subsequently repay the loan thereof with securities purchased or otherwise acquired by you for the account of the undersigned, or at your option instead of borrowing such other securities of like or equivalent kind and amount you may without notice to the undersigned purchase the same for the account of the undersigned and make delivery thereof to such purchaser or other party to whom delivery is to be made, and in the event of any such transaction the undersigned will be indebted to you for any and all expense, loss, damage and liability incurred by you in connection therewith.

9. You shall be under no obligation to deliver the same certificates or securities deposited with you or received by you for the account of the undersigned, but may deliver other certificates or securities of like or equivalent kind and amount.

10. You may settle disputes and controversies with other parties relating to transactions had or intended to be had for the account of the undersigned, in accordance with the requirements or customs of the exchange, board of trade or other market on which the same were executed or were intended by you to be executed and settlements so made shall be binding on the undersigned.

11. Every statement of any account of the undersigned shall be deemed to have been assented to by the undersigned as authorized and correct, unless you shall receive written notice to the contrary within five days after the day on which such statement of account is forwarded by you, and every transaction indicated or referred to in any notice of sale or of purchase or other notice or com-

munication shall be deemed to have been assented to by the undersigned as authorized and correct, unless you shall receive written notice to the contrary at least fifteen minutes before the opening of the exchange, board of trade or other market on which the same was executed, on the second business day after the day on which such notice or other communication is forwarded by you.

12. Your failure to exercise any of your rights in any one or more instances shall not be deemed a waiver thereof for the future.

13. Any and all notices, demands and other communications sent by mail, telegraph or messenger to the undersigned at the place indicated on the reverse side hereof as the address to which all communications are to be sent, or so sent to the undersigned at any other place specified in a notice of change of address of the undersigned hereafter received by you, shall be deemed to have been delivered personally to the undersigned and shall have the same [fol. 47] effect as if such personal delivery had been made.

14. This is a continuing agreement and consent applying to any and all future as well as existing and past transactions of the undersigned through or with your firm or any successor firm which may continue the business, superseding all prior agreements with respect to any of the matters herein provided for, and the provisions hereof shall be binding upon the undersigned and the personal representatives, successors and assigns of the undersigned, and any and all action herein authorized may be taken during the lifetime of the undersigned, during any disability of the undersigned and after the death of the undersigned.

15. The undersigned, if an individual, represents that he or she is over the age of twenty-one years and is not an employee of any exchange, or of any corporation of which any exchange owns a majority of the capital stock, or of a member of any exchange, or of a firm registered thereon, or of a bank, trust company, insurance company, or of any corporation, firm or individual engaged in the business of dealing either as broker or as principal in stocks, bonds or other securities, bills of exchange, acceptances or other forms of commercial paper.

16. None of the provisions hereof shall under any circumstances be deemed to have been waived, modified or otherwise affected except by agreement in writing signed on your behalf by a partner of your firm.

Very truly yours, (Signature of Customer): ——

——.

Witness (Signature of Witness): —— ——.

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[fol. 48] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION TO DISMISS—Filed Dec. 21, 1933

Comes now J. M. Lee, as Comptroller of the State of Florida, defendant in the above cause, and respectfully moves the above entitled Court to dismiss the bill of complaint herein, and as grounds for said motion assigns the following:

1. That said bill of complaint shows upon its face that it is without equity.

2. That said bill of complaint shows upon its face that plaintiffs, and each of them, have a complete and adequate remedy at law.

[fol. 49] 3. That said bill of complaint shows upon its face that plaintiffs and each of them have a complete and adequate remedy at law for the recovery of any taxes which might be enforced by this defendant against them.

4. That said bill of complaint shows upon its face that this Court is without jurisdiction in that plaintiffs, and each of them, have a complete and adequate remedy at law as aforesaid.

5. That said bill of complaint shows upon its face that this Court is without jurisdiction in that the allegation that "this is a suit wherein the amount in controversy exceeds exclusive of interest and costs, the sum and value of $3,000", is a mere conclusion of law and conclusion of the pleader, and is not supported by the facts alleged; the only facts so alleged being the loss of the Florida business, investments and property of the plaintiff brokerage firms,

which is of value to them far in excess of $3,000, when the rule is well settled that in suits of this kind the amount in controversy is the amount of the tax and nothing more.

6. That said bill of complaint shows upon its face that this Court is without jurisdiction in that it is not alleged the damage to each of the plaintiff brokerage firms, exceeds the jurisdiction amount necessary, and therefore, it is impossible to determine that this Court has jurisdiction of each of the separate causes of action vested in the respective plaintiffs; it not being permissible to join two separate causes of action in which the aggregate amount confers jurisdiction, when the amount involved in each of the causes so joined would not separately confer jurisdiction.

[fol. 50] 7. That said bill of complaint shows upon its face that there is a misjoinder of parties plaintiff, inasmuch as the cause of action in each of the plaintiff brokerage firms is separate and distinct.

8. That said bill of complaint shows upon its face that there is a misjoinder of parties plaintiff, inasmuch as this suit is not brought or prosecuted as a class suit, but attempts to join as parties plaintiff two plaintiffs, each of whom is alleged to have a separate and distinct cause of action.

9. That the bill of complaint is insufficient as a predicate for the prayer of the said bill.

Respectfully submitted this 21st day of December, A. D. 1933.

Cary D. Landis, Attorney General; Robert J. Pleus, Assistant Attorney General; J. V. Keen, Assistant Attorney General, Solicitors for Defendant.

[fol. 51] In United States District Court

[Title omitted]

Answer—Filed Dec. 21, 1933

Comes now the defendant, J. M. Lee, as Comptroller of the State of Florida, and in no manner waiving his motion

to dismiss filed herein, files this his Answer to the bill of complaint heretofore filed herein, and says:

1. That he neither admits nor denies, but states that he is without knowledge concerning the matters and things alleged in numbered paragraph 1 of said bill of complaint, and demands strict proof thereof; except that he admits that he is a citizen of the State of Florida, resides in the City of Tallahassee in said State, and is the duly elected, qualified and acting Comptroller of said State, and that his office is located in the Capitol Building in Tallahassee, Florida.

[fol. 52] 2. That he neither admits nor denies, but states that he is without knowledge concerning the matters and things alleged in numbered paragraph 2 of said bill of complaint, and demands strict proof thereof.

3. That he neither admits nor denies, but states that he is without knowledge concerning the matters and things alleged in numbered paragraph 3 of said bill of complaint, and demands strict proof thereof, except that he admits that the plaintiff firms maintain branch offices located in the cities alleged in said numbered paragraph 3; but as to the relationship or exact status of these branch offices and their relationship to the home offices in New York of the plaintiffs, this defendant is without knowledge; but this defendant admits that the offices of plaintiff firms engage in the business of and act as brokers in the sale and purchase of securities, and furnish stock market quotation information and reports for the benefit of their customers.

4. That this defendant neither admits nor denies but states that he is without knowledge concerning the matters and things alleged in sub-paragraph (a) of numbered paragraph 4 of said bill of complaint, and demands strict proof thereof; except that concerning the transaction of a purchase of stock for a Florida customer, he alleges:

(1) That there is made and executed in the State of Florida a request to buy certain stock or other securities by or on behalf of such customer and in writing.

(2) That following the purchase by the broker to whom the said request to buy was made, there is made, executed and delivered in the State of Florida and in writing, a

[fol. 53] statement showing that such request to buy has been complied with and the purchase has been made; such compliance statement being a memorandum of sale showing and confirming the fact that a sale has been made to the customer of the requested stock; and said compliance statement is a memorandum of sale of stock, which memorandum is made and executed in writing in the State of Florida and delivered to the Florida customer in the State of Florida, and is taxable pursuant to the provisions of paragraph 3 of Schedule A of Section 1 of Chapter 15787, Laws of Florida, Acts of 1931.

(3) That following the purchase by the broker to whom such request was made as aforesaid, and following the delivery of the compliance memorandum of sale as aforesaid, and generally in all nonmarginal transactions or otherwise, whenever requested by the purchaser so to do, there is made by the broker in Florida to the purchaser in Florida a delivery of the shares or certificates of other evidences of the securities so purchased, and at the time of such delivery there is made and executed in writing in Florida, in the form of a receipt or otherwise, and delivered by the Florida customer to the said broker in Florida, a memorandum of delivery evidencing the said delivery as aforesaid, which memorandum of delivery is taxable under the provisions of subparagraph 3 of Schedule A of Section 1 of Chapter 15787, Laws of Florida, Acts of 1931.

That this defendant neither admits nor denies, but states that he is without knowledge concerning the matters and things alleged in sub-paragraph (b) of numbered paragraph 4 of said bill of complaint, except that as to a sale of stock for a Florida customer, this defendant alleges:

[fol. 54] (1) That there is made and executed in writing in Florida, and delivered in Florida by the Florida customer to the Florida broker, a request to sell certain stock or other securities, which request is accompanied by the stock or securities requested to be sold or the money in sufficient amount to obtain the same; that said request is and constitutes a unilateral agreement to sell such stock or other securities, and is taxable in accordance with the law hereinabove mentioned; or in the alternative, and in the event that such request to sell is given orally by the customer to the broker, then there is made and executed

in writing by the broker a written instrument constituting an agreement to sell the stock so requested to be sold, which said written instrument is a written agreement to sell, taxable under the provisions of the law hereinabove mentioned.

(2) That following the sale by the broker pursuant to the request to sell as aforesaid, there is made and executed in Florida in writing by the said broker, and delivered by the said broker to the customer in Florida, a written instrument showing that the said request to sell has been complied with by the said broker, such written instrument constituting a memorandum of sale taxable under the provisions of the law above mentioned.

And further answering the allegations in numbered paragraph 4 of the said bill of complaint contained, this defendant alleges that upon a sale or purchase being made by the broker at the request of the Florida customer, there is made and entered in Florida in the books, ledgers or other records of the broker in Florida, a memorandum [fol. 55] showing that a sale has been made by or to the Florida customer so requesting as aforesaid, which memorandum is made as a part of a complete set of records showing the account of the customer, and showing the date of each transaction, the number of shares bought or received, or sold or delivered, the name of the security, the price, the debits, credits, and balances as the result of such transactions, as well as the interest, credits or adjustments allowed, all of which constitute a part of the complete records kept by each of the offices located within the State of Florida, of the account of each of their Florida customers, that the said memorandum so made or entered in the records or accounts of the broker as aforesaid is a memorandum of sale or a memorandum of delivery, as the case may be, and as such is taxable under the provisions of the law hereinabove mentioned.

And further answering the allegations in numbered paragraph 4 of said bill of complaint contained, this defendant alleges that whenever, either on purchase or sale or pledge or otherwise, there is a physical delivery of the actual shares or certificates or other evidences of securities being dealt in, by the customer to the broker, or by the broker to the customer, within the State of Florida, there is made

and executed in writing and delivered by the broker to the customer, or by the customer to the broker, as the case may be, within the State of Florida, a written receipt for or evidence of such delivery, which constitutes and is a memorandum of delivery, and which is taxable under the provisions of the law hereinabove mentioned.

And further answering the allegations in numbered paragraph 4 of said bill of complaint contained, this defendant says that if the actual sale of the security takes place [fol. 56] outside of the State of Florida, and when there is an agreement to sell and a memorandum of sale and a memorandum of delivery, or one or more of such instruments, which constitute written evidence of various steps in one and the same transaction, under the statute hereinabove set forth only one of such instruments is liable to the tax, and then only in the event that the same is made in Florida.

And further answering the allegations in numbered paragraph 4 of said bill of complaint, this defendant says that he is without knowledge concerning the exact forms used in connection with the transactions, or details or records or writings hereinabove in this paragraph mentioned, but states that all such information is fully and completely within the knowledge of both of the plaintiff firms, and readily obtainable by this Court.

5. That this defendant neither admits nor denies, but states that he is without knowledge concerning the matters and things in numbered paragraph 5 of said bill of complaint contained, and demands strict proof thereof.

6. That this defendant neither admits nor denies, but states that he is without knowledge concerning the matters and things in numbered paragraph 6 of said bill of complaint contained, and demands strict proof thereof, except that this defendant specifically denies that the arrangement made between the brokers and their customers for the purchase and sale of stock or securities is a simple agency contract, but alleges on the contrary that plaintiffs act as stockbrokers in that the contract entered into is a brokerge contract with all the legal incidents, obligations, rights and duties arising therefrom.

[fol. 57] 7. That this defendant neither admits nor denies, but states that he is without knowledge concerning

the matters and things in numbered paragraph 7 in said bill of complaint contained, and demands strict proof thereof.

8. That this defendant neither admits nor denies, but states that he is without knowledge concerning the matters and things in said numbered paragraph 8 of said bill of complaint contained, and demands strict proof thereof.

9. That this defendant neither admits nor denies, but states that he is without knowledge concerning the matters and things in numbered paragraph 9 of said bill of complaint contained, and demands strict proof thereof, except as to the records of the Florida customers contained in the Florida branch offices, and as to these this defendant alleges the same to be as hereinabove in numbered paragraph 4 hereof detailed and set forth.

10. That this defendant neither admits nor denies, but states that he is without knowledge concerning the matters and things in numbered paragraph 10 of said bill of complaint contained, and demands strict proof thereof.

11. That this defendant neither admits nor denies, but states that he is without knowledge concerning the matters and things in numbered paragraph 11 in said bill of complaint contained, and demands strict proof thereof, except that he denies that in transmitting messages or information from Florida to New York, or from New York to Florida, or in shipping or transferring stocks or securities for plaintiff's customers between such States, or between Florida and other States in which exchanges dealt on are [fol. 58] located, that the said plaintiffs, or either or any of them, are in any manner whatsoever engaged in commerce between the States or in commerce between the State of Florida and certain foreign countries.

12. That this defendant admits the allegations in numbered paragraph 12 of said bill of complaint contained, except that he denies that the tax imposed is limited to and applies only to actual sales and transfers of stock or to contracts entered into between sellers and purchasers thereof, or to memoranda of sales which are delivered by the seller to the purchaser, and alleges that the said Act speaks for itself.

13. That this defendant admits the allegations in numbered paragraph 13 of said bill of complaint contained, but alleges that the said Section 2 of the said Act speaks for itself.

14. That this defendant neither admits nor denies, but states that he is without knowledge concerning the matters and things in numbered paragraph 14 of said bill of complaint contained, and demands strict proof thereof, except that he admits that he succeeded the prior Comptroller of the State of Florida in January, 1933.

14 (a) That this defendant denies that the meaning or intent of the said Florida Documentary Stamp Tax Act, or the proper construction thereof in respect to the matters referred to in the bill of complaint herein, was or is, that the taxes thereby levied shall apply only to a sale of stock, which sale actually takes place in the State of Florida, or to any contract for the sale of stock, which contract is made and delivered in the State of Florida by the seller to the purchaser of the stock, or to any memorandum of sale of a contractual nature, which is actually delivered within the [fol. 59] State of Florida by the seller of the stock to which it refers, to the purchaser thereof, and which memorandum passes between the said parties to the sale as an instrument obligating the seller on the one hand to make delivery, and which has the effect in the hands of the purchaser of a binding instrument by virtue of which he can enforce delivery to him of such stock; and this defendant further denies that the written notices or memoranda or other papers delivered by a purchaser or seller of stock to his agent, requesting such agent to make a purchase or sale on such principal's behalf, or which are delivered by the agent to his principal showing that the requested sale or purchase has been made outside the State of Florida, with a third party, by the agent for the principal as requested, or records which the agent may keep of such purchases or sales made by him outside the State of Florida, are not taxable under the Florida Documentary Stamp Tax Act, for any reason whatsoever; and this defendant further denies that the class of documents taxable under said statute is limited to instruments which pass from the seller to the purchaser in connection with a sale of stock, and denies that the language of the statute or its

proper construction excludes such papers or memoranda of sales from taxation thereunder; and alleges that the said statute, together with its meaning, intent and legal effect, speaks for itself, and is a matter of law for this Court to determine, rather than the construction placed thereon by the plaintiffs herein.

15. That this defendant admits that on or about the 23rd day of November, 1933, he appeared at the branch offices of each of the plaintiff brokerage firms located in Jacksonville, Florida, but denies that he demanded that documentary stamps in any amount be placed upon any [fol. 60] written request which any customer as principal should make of the said firms and brokers, or either of them, as their agents or otherwise, to either buy or sell stock for such customers on exchanges outside the State of Florida, or on any of the telegraphic messages which the employees of the Florida branch offices of the said brokerage firms should receive from the New York offices of the firms, and deliver to Florida customers, by which the said firms, as agents or otherwise, informed the said customers, as principals or otherwise, that the requested purchase or sale had been made as the customer had directed; and this defendant denies that he then took, or since that time has taken, the position that the said communications between the said brokers and their principals are taxable under said Act, or that the records which said principal offices keep of the sales and purchases their firms make in States other than the State of Florida, for or at the request of their Florida customers, are taxable under said Act, or that he is threatening to enforce the payment of such taxes in any manner by virtue of the enforcement or penalty provisions of said Act or otherwise, except that this defendant admits that at such time he stated and demanded that documentary stamps in the amount provided for by the said Act should be placed upon and paid for in respect of the several documents, writings, instruments, memoranda, and/or records as hereinabove in numbered paragraph 4 hereof detailed and set forth as taxable under the *the* said Act; and this defendant alleges that since such time he has maintained the same position, and further alleges that he is threatening to enforce the Act, in [fol. 61] compliance with the terms thereof, against the plaintiffs and each of them, and against every other person,

firm or corporation subject to the terms of the Act, who is violating the same or failing to comply therewith; but alleges that such enforcement will not be carried out in any unreasonable, arbitrary or oppressive manner.

16. That this defendant denies that if the said Florida Documentary Stamp Tax Act be construed according to his contentions as hereinabove made, that the levy and collection of the tax as demanded and threatened by this defendant as hereinabove set forth, or the requirement that the same be paid by the plaintiffs under said Act under any circumstances whatsoever, would render said Act unconstitutional as a violation of Article I of Section 8, Clause 3, of the Constitution of the United States, by constituting any burden on any interstate commerce in which plaintiffs may be engaged; and denies that the same would be a violation of the first Section of Article XIV of the amendments to the Constitution of the United States, as depriving the plaintiffs of their property without due process of law, or by denying to them within the jurisdiction of the State of Florida, the usual protection of the laws; and denies that plaintiffs are engaged in interstate commerce, and denies that the said Documentary Stamp Tax Act of Florida, or the enforcement of the taxes therein levied and required to be collected and paid in any manner whatsoever, violates any provision of the Constitution of the United States or any amendments thereto.

17. That this defendant denies that if the said Florida Documentary Stamp Tax Act be construed or enforced according to his contentions as hereinabove set forth, it would [fol. 62] violate either the 12th Section of the Declaration of Rights, or the first Section of Article IX, or the 16th Section of Article III of the Constitution of the State of Florida in any manner whatsoever.

And further answering the last paragraph in numbered paragraph 17 of said bill of complaint contained, this defendant denies that he has threatened to proceed to enforce said Act, except as hereinabove set forth and alleged, but admits that he will enforce the same in compliance with the terms thereof, retro-actively as of November 23, 1933, and that he so advised these plaintiffs.

18. This defendant neither admits nor denies but states that he is without knowledge concerning the matters and

things in numbered paragraph 18 of said bill of complaint contained, and demands strict proof thereof.

19. This defendant neither admits nor denies but states that he is without knowledge concerning the matters and things in numbered paragraph 19 of said bill of complaint contained, and demands strict proof thereof, except that he denies that the plaintiffs have no plain, adequate or complete remedy at law, and denies that to enforce the right which the plaintiffs have to recover back amounts paid through such stamp taxes in the event the same should be found to have been illegally levied or collected, would require a multiplicity of suits; and this defendant alleges that one suit at law for the recovery back of such taxes would determine the constitutionality or unconstitutionality, and the validity or invalidity, and the legality or illegality of the said Act, and the taxes levied or collected [fol. 63] pursuant thereto, and would enforce a return of the full amount in the event such were adjudged to be due plaintiffs; and this defendant alleges that plaintiffs, and each of them, have a full, complete, plain and adequate remedy at law.

20. That this defendant denies that there is no plain, adequate or complete remedy at law available to the plaintiffs, but on the contrary alleges that there is, in answer to the allegations in numbered paragraph 20 of the bill of complaint contained, a plain, complete and adequate remedy at law.

21. That this defendant denies that it would be necessary for the plaintiffs to resort to a multiplicity of suits, either civil or criminal, to protect themselves or their servants in the conduct of their said business, in order to test the validity of the Act, or that the enforcement of the same in the manner hereinabove set forth will render it unprofitable for plaintiffs to continue in the conduct of their said business, or make it impossible for their employees to continue to perform their duties through being constantly harassed by multiple arrests, or otherwise. And denies that such enforcement would deprive the Florida customers of the plaintiffs of the representation which they are being afforded by the plaintiffs, or would cause undue expense or hardship upon the plaintiffs.

22. That this defendant denies that the enforcement of said Act in the manner hereinabove set forth against the plaintiffs as the same is hereinabove construed by him, would result in irreparable injury, or any injury, to the [fol. 64] plaintiffs, or destroy the Florida business of the plaintiff brokerage firms, or cause them the loss of their good will in any manner whatsoever, or render them unable to serve their customers who are residents of the State of Florida, or cause loss to plaintiffs in the value of the properties in which they have invested, and which are being used by them in the conduct of their business in Florida, whether the same could be transported profitably for use elsewhere, or put to any other use or not. And this defendant further alleges that the value of such business, good will, property or investments is immaterial to the issues in this cause.

23. That this defendant admits that he will enforce in the manner hereinabove set forth the collection of taxes pursuant to the provisions of the said Florida Documentary Stamp Tax Act, and avail himself of the penalties provided for therein, to the extent as set out in numbered paragraph 4 hereof, unless enjoined by this Honorable Court.

24. That this defendant denies that irreparable loss or damage would result to plaintiffs unless a temporary restraining order should be granted by reason of the construction of the said Act placed thereon by this defendant as hereinabove in paragraph 4 hereof contained, or by reason of the daily payment of taxes during the time between the filing of the bill of complaint herein and the hearing and determination after due notice of an application for the interlocutory injunction, or by reason of leaving the plaintiffs' employees in their said Florida branch offices subject to multiple arrests or criminal prosecutions pending said hearing for an injunction.

25. And further answering the bill of complaint, this defendant now offers to receive tax payments from the [fol. 65] plaintiffs on account of the taxes required by the terms of the said Documentary Stamp Tax Act as hereinabove in numbered paragraph 4 hereof set forth, and to impound the same and securely keep and preserve the same pending the ultimate and final decision on the law side of

a court of last resort, either State or Federal, provided that such suit be filed immediately and prosecuted with all reasonable diligence, and provided that such taxes be paid from day to day as the same become due; and upon the ultimate decision, should it be adjudged that said taxes, or any of them, were illegally exacted or collected, to repay the same in accordance with such final judgment.

26. And further answering this bill of complaint, this defendant alleges that wherever in this Answer the word "security", (or the plural thereof) is used, it is intended to mean shares or certificates of stock or profits or interest in property or accumulations in any corporation, or rights to subscribe for or to receive such shares or certificates.

And now having fully answered the said bill of complaint, this defendant respectfully moves to be hence discharged with his costs in this cause most wrongfully sustained.

J. M. Lee, as Comptroller of the State of Florida.
Cary D. Landis, Attorney General; Robert J. Pleus, Assistant Attorney General; J. V. Keen, Assistant Attorney General, Solicitors for Defendant.

[fol. 66] *Duly sworn to by J. M. Lee. Jurat omitted in printing.*

[fol. 67] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER EXTENDING TEMPORARY RESTRAINING ORDER—Dec. 21, 1933

It appearing that on December 11, 1933, this Court made and issued a temporary restraining order enjoining the defendant in certain respects as therein specified, and that said order provided that the same should remain in effect until the hearing and determination of the application for an interlocutory injunction in this case, but not to exceed ten (10) days from that date unless the same should be extended for a like period within said time, and the Court having therein set December 21, 1933, as the time for the

hearing of such application, and the application having been presented but remaining undetermined on that date.

It is, therefore, ordered that said temporary restaining order be, and the same is hereby extended until the deter-
[fol. 68] mination of said application for interlocutory injunction herein.

Done and ordered at Pensacola, Florida, this 21st day of December, A. D. 1933.

Wm. B. Sheppard, United States District Judge.
N. P. Bryan, Circuit Judge. Alexander Akerman, District Judge.

IN UNITED STATES DISTRICT COURT

[Title omitted]

AMENDMENT TO BILL OF COMPLAINT—Filed Jan. 1, 1934

Come now the plaintiffs in the above entitled cause, and pursuant to leave granted by order of Court, file this [fol. 69] amendment to their bill of complaint herein, and hereby amend said bill by adding thereto the following allegations to be designated as paragraphs 22-a, 22-b and 22-c, to-wit:

"22-a. Plaintiffs further allege that the amount of the stamp taxes, to enjoin the imposition and collection of which this suit is brought, is far in excess of the sum of $3,000.00; that the amount of stamp taxes which, under the defendant Comptroller's construction of the Act, would be payable and collectible by virtue of the business transacted by the plaintiffs making up the firm of Thomson & McKinnon through that firm's Florida offices, amounts to more than $3,000.00 for the period from November 23, 1933, to December 11, 1933, the date of the filing of this suit, and will amount to more than $3,000.00 by virtue of such business for the period from the commencement of this suit to the time of its final determination; and that the amount of stamp taxes which, under the defendant Comptroller's construction of the Act, would be payable and collectible by virtue of the business transacted by the plaintiffs making up the firm of Fenner, Beane & Ungerleider, through that firm's Florida offices, amounts to more

than $3,000.00 for the period from November 23, 1933, to December 11, 1933, the date of the filing of this suit, and will amount to more than $3,000.00 by virtue of such business for the period from the commencement of this suit to the time of its final determination.

"22-b. The plaintiffs named and described in the original bill of complaint as Co-partners trading and doing business under the firm name and style of Thomson & McKinnon, further allege that the Florida business of that firm, which in the original bill it is alleged will be lost and destroyed by the enforcement of Chapter 15,787, Laws of [fol. 70] Florida, 1931, as threatened, is of a value far in excess of $3,000.00, and that the loss, damage and injury, which by paragraphs 19, 20, 21 and 22 of the original bill it is shown and alleged will occur to and be suffered by the plaintiffs through the threatened enforcement of the Act, will amount to more than $3,000.00 as to each of the plaintiffs described, as aforesaid, as the Co-partners constituting the said firm of Thomson & McKinnon.

"22-c. The plaintiffs named and described in the original bill of complaint as Co-partners trading and doing business under the firm name and style of Fenner, Beane & Ungerleider, further allege that the Florida business of that firm, which in the original bill it is alleged will be lost and destroyed by the enforcement of Chapter 15,787, Laws of Florida, 1931, as threatened, is of a value far in excess of $3,000.00, and that the loss, damage and injury, which by paragraphs 19, 20, 21 and 22 of the original bill it is shown and alleged will occur to and be suffered by the plaintiffs through the threatened enforcement of the Act, will amount to more than $3,000.00 as to each of the plaintiffs described, as aforesaid, as the Co-partners constituting the said firm of Fenner, Beane & Ungerleider."

Shutts & Bowen, Attorney for Plaintiffs, by Charles A. Carroll.

[fols. 71 & 72] *Duly sworn to by E. W. Griffin and Kingman Moore. Jurats omitted in printing.*

[fol. 73] IN UNITED STATES DISTRICT COURT

[Title omitted]

INTERLOCUTORY INJUNCTION—Jan. 18, 1934

This cause coming on to be heard upon the motion of the plaintiffs for an interlocutory injunction, the verified bill of complaint, the amendment thereto, the affidavits in support thereof, and the motion of the defendant to dismiss the bill of complaint, and counsel for the respective parties having appeared before the court in accordance with due notice of hearing on said motion for injunction, and the court having duly considered the same upon the [fol. 74] briefs submitted after argument of counsel, and being of the opinion that the plaintiffs are entitled to the interlocutory injunction as prayed, it is:

Ordered, adjudged and decreed that, until further order of this court, the defendant, J. M. Lee, as Comptroller of the State of Florida, and his agents, servants, employees and attorneys, and any and all officers of the said State acting by, through or under his direction or administration, be and they are hereby restrained from enforcing the Florida Stamp Tax Act, being Chapter 15,787, Laws of Florida, 1931, against the plaintiffs, through demanding or requiring that any tax provided for under said Act be paid with respect to or for by reason of any written communication, document or memorandum (with the exception of marginal agreements whereby money or credit is loaned by the plaintiff brokers to their Florida customers) which may have been or may hereafter be delivered, passed or exchanged, by the plaintiff brokers or their employees to their Florida customers, or by their said customers to the plaintiffs or any of their employees, in connection with or in any manner related to the transactions for the purchase and sale of stocks or securities on Exchanges located outside of the State of Florida, which have been, or shall hereafter be made by the plaintiff brokers, or any of their servants or employees, for or on behalf of any customers, who in Florida have requested or ordered the same to be made, or who shall request or order the same to be made, and from levying any such tax provided for or contemplated by said Act, upon any books, ledgers, records, or

[fol. 75] memoranda in the possession of the plaintiffs or their employees in the State of Florida, relating to their acts and business in connection with the purchase or sale of any stocks or securities on Exchanges located outside the State of Florida for or on behalf of their customers, and which purchases or sales shall have been or shall be made by them in accordance with the requests, directions or orders to them by their customers, and from enforcing or causing to be enforced any penalties provided by said Act against the plaintiffs or any of their servants, agents or employees. This injunction shall become effective upon the filing in this cause of a bond of the plaintiffs with good and sufficient sureties to be approved by the Clerk of this Court, in the penal sum of $10,000.00 payable to the defendant, conditioned for the payment of such costs and damages as may be suffered by the defendant if it should be hereafter determined that this injunction was illegally or improvidently issued.

Done and ordered in Chambers this 18th day of January, A. D. 1934.

N. P. Bryan, U. S. Circuit Judge. Alexander Akerman, U. S. District Judge. Wm. B. Sheppard, U. S. District Judge.

[fol. 76] IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA

In Equity

JOHN P. BICKELL, GEORGE B. BUCHANAN, ALFRED W. MANSFIELD, Selden F. White, Henry Holt, William L. Meffert, Alfred S. Rogers, Timothy P. Brosnan, Harold N. Scott, John W. Jordan, George H. Ross, James A. Kiernan, Henry T. Hermes, and Benjamin E. Billings, Co-partners, Trading and Doing Business under the Firm Name and Style of Thomson & McKinnon, and Alpheus C. Beane, Charles E. Fenner, Joseph N. Carpenter, R. Browder Flinn, Earl H. Hulsey, John McCorkle, Rob't A. McCord, John L. Julian, Sully C. Pecot, Alfred S. Wyllie, James P. Butler, Leslie L. Vivian, Hugh W. Long, Herbert R. Hastings, E. Wright Noble, Curtis B.

Dall, Victor B. Cook, Norman Weiden, Louis W. Laudick, and Hoyle Jones, Co-partners Trading and Doing Business under the Firm Name and Style of Fenner, Beane & Ungerleider, Plaintiffs,

vs.

J. M. Lee, as Comptroller of the State of Florida, Defendant

In Equity. Suit by John P. Bickell and others against J. M. Lee, as Comptroller of the State of Florida. On defendant's motion to dismiss the bill of complaint as amended and plaintiffs' motion for an interlocutory injunction.

Shutts & Bowen, of Miami, Florida, for plaintiffs.

Cary D. Landis, Atty. Gen., Robert J. Pleus and J. V. [fol. 77] Keen, Assts. Atty. Gen., of Tallahassee, Florida, for Defendant.

Before Bryan, Circuit Judge, and Sheppard and Akerman, District Judges

Opinion—Filed Jan. 24, 1934

Sheppard, District Judge:

The plaintiffs, who comprise two co-partnerships and who are engaged in the business of stock brokers, seek injunctive relief against the Comptroller of the State of Florida by a bill to restrain the enforcement of the Stamp Tax Act (Chapter 15,787, Laws of Florida, 1931), on the ground that the same violates the Constitution of The United States (Article 1, Section 8, Clause 3) by laying an undue burden on interstate commerce, and that such enforcement of the Act deprives plaintiffs of their property without due process of law (Article 14, Section 1).

The Act assailed levies a tax of 10¢ per $100.00, inter alia, upon

"all sales, agreements to sell, or memoranda of sales or deliveries of, transfers or legal title to shares, or certificates of stock * * * whether made upon or shown by the books of the corporation, or by any assignment in blank, or by any delivery, or by any paper or agreement of memorandum or other evidence of transfer or sale * * *".

Also, "promissory notes, non-negotiable notes, written obligations to pay money, * * * made, executed, delivered, sold, transferred or assigned in the State of Florida * * *".

While the plaintiffs are not citizens of Florida, they maintain branch offices in the State through which they act as agents for their Florida customers in the capacity of commission brokers by making purchases and sales of stock on the New York Stock Exchange and on other [fol. 78] Exchanges outside of the State of Florida. The practice and procedure followed by the two firms in representing their customers on the Stock Exchanges is set out in extenso in the Bill of Complaint, and is that substantially followed by all stock brokers. It is sufficiently disclosed by the bill that all purchases and sales of stock and the actual delivery is made in the State of New York, or other state in which the Exchange is located, between the floor members or brokerage firms who take part in such transactions simultaneously with full payment for the stock. The brokerage firm, acting as agent for its Florida customers, completes the transaction outside of the State of Florida. Prior to the completion of the transaction the only written documents passing between the brokerage firm and the customer in Florida are the written requests of the customer that the firm purchase or sell for his account, and copies of telegraphic communications from the New York Office of the broker advising the customer that such requests have been complied with.

Defendant's motion to dismiss is upon general grounds, that the bill is without equity, plaintiffs having their remedy at law, that it is not alleged that each of the plaintiff brokerage firms will be damaged in an amount in excess of $3,000.00; that there is a misjoinder of causes of action and of parties plaintiff. After argument counsel for plaintiffs were allowed to amend so as to sufficiently allege damages to each party in the jurisdictional amount.

The jurisdictional amount for each party plaintiff, and diversity of citizenship being properly averred, all questions of jurisdiction may be disposed of by our holding that plaintiffs' remedy at law is not plain, adequate and complete. It is alleged in the bill that the payment of [fol. 79] each tax under the Act is a separate transaction and consequently the recovery of such payments at law would require a multiplicity of suits and this alone, we

conclude, is sufficient to give a court of equity jurisdiction.

There is no merit in defendant's contention that there is a misjoinder of parties plaintiff or of causes of action. The joinder is clearly within the scope of Federal Equity Rule 26 which allows a joinder where sufficient grounds appear for uniting the causes of action in order to promote the convenient administration of justice. That this ground for joinder applies to parties plaintiff as well as defendants is, it appears, well settled; see, International Organization, etc., vs. Red Jacket C. C., etc., 18 F. (2d) 839; and Shamrock Mfg. Co. vs. Radio Corp., 37 F. (2d) 675.

It is our opinion that all purchases and sales of stock by the plaintiff brokerage firms for their Florida customers, whether the stock is bought outright by the customer or upon a margin, are transactions entirely completed outside of the State of Florida and that any memoranda passing between the broker and the customer are not such documents as are subject to taxation in Florida. To hold such memoranda of sales made without the State to be subject to taxation would be giving the statute extra-territorial effect. People ex rel. Hatch vs. Reardon, 97 N. Y. S. 535. For a state to tax property beyond its jurisdiction is a taking of property without due process of law. Frick vs. Pennsylvania, 268 U. S. 473; First Nat. Bank vs. Maine, 284 U. S. 312.

However, where a sale is made of stock of a Florida corporation and a transfer made upon the books of the corpo- [fol. 80] ration in Florida, the State may properly tax the transfer as one made within the State. See People ex rel. Hatch vs. Reardon, supra.

Although the point was not argued by counsel nor directly presented in the bill, the allegations of the bill disclose a transaction with reference to the marginal accounts of Florida customers with the brokers' agents in Florida. In view of this showing by the bill, even though not put in issue, we deem it advisable, as a cautionary suggestion, to decide once for all that such transactions are subject to the tax. The agreement which the customer is required to sign upon opening a marginal account is attached to the bill as an exhibit. It provides that any and all securities, commodities and other property held by the broker for the account of the customer shall constitute collateral security for any and all of the obligations of the customer to the broker. Upon the execution of such an agreement and the

deposit of security the broker advances a portion of the purchase price of the stocks which the customer wishes to buy on margin. This is clearly a loan of money or credit by the broker to the customer and is a transaction collateral to the purchase or sale of stock. The transaction takes place entirely in Florida and is similar to the execution of a collateral note to secure a loan from a bank. This collateral agreement may be subject to the tax in accordance with the amount of money loaned thereunder as it is a written obligation to pay money which is made, executed and delivered in the State of Florida.

Interlocutory injunction will issue in conformity with the views here expressed.

[fol. 81] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION AMENDING TO CHANGE NAME OF PLAINTIFF FIRM—Filed March 10, 1934

It is hereby stipulated by and between the parties plaintiff and the party defendant in this cause, through their undersigned attorneys of record, that without the necessity for an order of Court, and without the filing of a formal amendment to the bill, or the filing of a supplemental bill, the original bill of complaint be, and the same is hereby [fol. 82] considered further amended to substitute the firm name "Fenner & Beane" in all places in the bill of complaint where the firm name "Fenner, Beane & Ungerleider" is used and stated, and that in all future proceedings in this cause the partnership firm which is composed of certain of the plaintiffs, and which was originally designated herein as the firm of Fenner, Beane & Ungerleider, shall be named and referred to as Fenner & Beane.

Dated this 9th day of March, A. D. 1934.

Charles A. Carroll, Shutts & Bowen, All of Miami, Florida, Attorneys for Plaintiffs. Cary D. Landis, Attorney General of Florida, by Robert J. Pleus, Assistant Attorney General; Robert J. Pleus, Assistant Attorney General of Florida; H. E. Carter, J. V. Keen, Assistants Attorney General of Florida, All of Tallahassee, Florida, Attorneys for Defendant.

[fol. 83] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION OF FACTS—Filed March 10, 1934

It is hereby stipulated in this above entitled cause, by and between the parties plaintiff and the party defendant, through their respective undersigned attorneys of record, that for convenience, and to expedite a trial of this cause, the facts which are hereinbelow set forth and the writings and instruments which are herein referred to and attached as exhibits, shall be evidence in this cause, upon the issues raised by the pleadings to which they relate, and as to which they may be material, and that said facts and instruments shall be admissible and received as competent evidence upon final hearing in this cause in lieu of the testimony of competent witnesses in open Court as to said facts and matters, and in lieu of formal introduction of the said instruments and writings into evidence; and

It is further stipulated that those facts and matters which are hereinbelow described as being the testimony or the evidence of the parties plaintiff or party defendant, likewise [fol. 84] shall be competent evidence upon final hearing in this cause, in the same manner and with the same effect and probative force as though the "testimony" referred to had been adduced at such hearing by interrogation of witnesses without objection; and

It is hereby further stipulated that in addition to the evidence supplied by this stipulation the parties hereto shall be at liberty to submit any other and additional evidence upon a final hearing in this cause, which may be competent and material and relevant upon any of the issues in this case.

The matters of fact and writings and instruments so stipulated herein are as follows:

1. The plaintiffs in this case, as partners respectively of the firms of Thomson & McKinnon and Fenner & Beane, which are hereinbelow referred to as the plaintiff firms, have their principal offices in the City, County and State of New York, and are engaged in the business of acting as stock brokers. Each of said plaintiff firms has numerous branch offices in places other than New York City, including a number of branch offices within the State of Florida,

which are located in the Florida cities mentioned in the bill of complaint in this case. Each of said firms has one or more members who are members of the New York Stock Exchange and of the leading Stock Exchanges located in the principal cities of the United States and in certain Stock Exchanges in foreign countries. No one of the plaintiffs is a member of any Stock Exchange located within the State of Florida, and the plaintiffs do not transact any business on any Stock Exchange located or situated in the State of Florida. In conducting such business the plaintiff firms act for their customers in their capacity as commission brokers and do not engage in the business of floating, issuing or underwriting stocks or securities. The business transacted by the said firms for customers through their Florida branch offices consists of acting as brokers for such cus- [fol. 85] tomers in making for them purchases and sales of stocks and securities, principally on the New York Stock Exchange, and to a considerably lesser extent on other Stock Exchanges. In connection with acting as brokers for their Florida customers in such manner, plaintiff firms in their branch offices in the State of Florida furnish for the convenience and benefit of their customers, stock market telegraphic information reflecting the market price of stocks, sometimes referred to as market quotations, and such information is provided by the plaintiff firms by leased direct wire telegraph facilities from various Stock Exchanges outside the State of Florida. In addition to the leased telegraphic facilities by which market quotations are received in the Florida branch offices, each of the plaintiff firms leases, maintains and operates direct, private telegraphic facilities between its Florida branch offices and its New York office, which service is devoted exclusively to use by the firm for its firm business.

2. Each and all of the plaintiffs are non-residents of the State of Florida, and the States of their citizenship and places of their residence respectively, are as stated and alleged in the bill of complaint as amended in this cause.

3. The stamp taxes which are claimed by the Comptroller to be payable by virtue of the transactions with which the case is concerned, would amount to more than $3,000.00 exclusive of any interest or costs, for each of the two plaintiff partnership firms for the period from November 23,

1933 (the date on which the defendant Comptroller demanded that payment of such tax should be made), to December 14, 1933 (the date on which this suit was instituted), and likewise would amount to more than $3,000.00 exclusive of interest or costs, for each of the two plaintiff partnership firms for the time subsequent to the commencement of this suit.

[fol. 86] 4. That value of the Florida business of each of said partnership firms, which it is alleged in the original bill of complaint would be lost and destroyed by the enforcement as threatened of Chapter 15787, Laws of Florida 1931, is in excess of the sum of $3,000.00, and the loss, damage and injury which by paragraphs 19, 20, 21 and 22 of the original bill of complaint it is alleged would occur to and be suffered by plaintiffs through the threatened enforcement of said Act, would exceed the sum of $3,000.00, exclusive of any interest or costs, as to each of the plaintiff partnership firms, and would amount to more than $3,000.00 as to each of the plaintiffs.

5. It is the testimony of the plaintiffs that the enforcement of the Act, as threatened, will result in injury amounting to more than $3,000.00, exclusive of interest and costs, to each of the plaintiff firms, through reduction in their Florida business, including injury to their good will and injury to their property. It is denied by the answer of the defendant that such loss, damage or injury would occur from such enforcement of said Act, and it is not now admitted or conceded by the defendant that such loss, damage or injury would so result from such enforcement of the Act.

6. The manner in which the plaintiff brokers make purchases and sales of stock on the New York Stock Exchange for their Florida customers, is similar in all material respects to that employed in making purchases and sales on the other Stock Exchanges all of which are outside the State of Florida on which such transactions are made by the plaintiff firms for their Florida customers. These transactions in all material respects are handled in the same manner by the two plaintiff firms, and the course and practice followed by the plaintiff brokers in making purchases and sales of [fol. 87] stock on the New York Stock Exchange for Florida customers is as follows:

7. As to a purchase of Stock for a Florida customer:

(a) An "order" for the purchase of stock is made by a Florida customer by communicating to the employees of a Florida branch office of the firm that he desires them to purchase for him a quantity of a certain stock at a certain price, or at the market price then prevailing. The "order" may be an "open order", that is, one to remain in effect until executed or until cancelled by the customer, or it may be a "day order", which is to remain in effect only for the day on which it is given. Many such orders necessarily are never executed. The orders are not required to be in any particular form. They may be and often are transmitted orally, or by telephone, telegraph or letter. If the customer is in the branch office at the time his instructions are given, in such instance a written order is usually filled out by the customer, to which the customer affixes his signature, or the serial number which the firm has assigned to his account, or it is filled out by an employee of the brokers who, in that case, at the customer's direction and consent, either signs the customer's name thereto, or affixes the serial number of his account. The plaintiff firms assign a number to each customer which applies only to the account of the particular customer to whom the same is assigned, and which is used in identifying the account and transactions of the customer. It is not essential to such a transaction that the order should be in writing. A form of such a written "order" is attached hereto, marked Exhibit 1 and made a part hereof.

(b) The defendant Comptroller does not contend that a written order for purchase (Exhibit 1) is an instrument taxable under the Act.

[fol. 88] (c) The employees of the firm of the Florida branch office, upon receiving an order for the purchase of stock, communicate the same to the New York office of the firm, by telegraph, over the firm's leased private telegraph wire.

(d) Thereupon the plaintiff firm proceeds to execute the order of the Florida customer (if such order is possible of execution at the price specified), on the floor of the New York Stock Exchange, through its representatives, on the floor of the Exchange. The order is executed on the Ex-

change by the representative of the plaintiff firm by entering into a contract there with another floor member of the Exchange representing the owner of the stock which is for sale. The contract for the purchase of stock which is thus made by the plaintiff firm on the New York Stock Exchange, is one, the terms of which are specified and controlled by the rules of the New York Stock Exchange, which are the Constitution of the Exchange, and such rules as are provided thereunder. One such rule of the Exchange, and therefore one term of such contract, requires that the contract shall be reduced to writing and shall be exchanged by delivery in New York City between the parties thereto on the day of the transaction. Accordingly, on the day of such transaction a written contract known as an "exchange contract" is passed between the parties in the City and State of New York. A form of such "exchange contract" is attached hereto, made a part hereof and marked Exhibit 2.

(e) This "exchange contract", Exhibit 2, is not claimed by the defendant Comptroller to be taxable under the Act.

(f) Immediately following the making of such purchase of stock on the floor of the Stock Exchange in the manner above described, the New York City office of the firm com- [fol. 89] municates the fact by telegraph over its private wire facilities to the Florida branch office in which the order for the purchase originated. An employee in the Florida branch office receives or takes off the telegram by typewriter in original and copy form. Such telegraphic notice of the purchase which has been made in New York sets forth the date and time of the purchase, the number of shares and name of the stock, the price at which bought, and the serial number of the account of the customer who was represented in that transaction. A form of such telegraphic notice is attached hereto and made a part hereof, marked Exhibit 3.

(g) It is then the practice of the Florida branch office to notify the customer that the purchase has been made. This notice is sometimes given orally or by telephone. Where the customer is in the branch office, or requests it, the branch office customarily gives him such notice by delivering to him the original or a carbon copy of such telegram (Exhibit 3). The customer has no contractual or other right to demand the delivery to him of the original or of a copy of

such telegram, and the rules and practice of the plaintiff firms do not require the delivery thereof.

(h) This telegram containing information that the customer's requested purchase has been made in New York City (Exhibit 3) is claimed by the defendant Comptroller to be taxable under the Act involved.

(i) As a settled practice of the plaintiff firms, they dispatch to the customer from New York by mail a form statement showing that the purchase has been made. This notice is mailed from New York City on the day of the transaction. It contains the name of the seller, number of shares and name of the stock, price per share, amount of the commis- [fol. 90] sion, total consideration and the name of the customer. An example of such a notice or "confirmation" is attached hereto, made a part hereof and marked Exhibit 4.

(j) This communication which is mailed to the customer (Exhibit 4) is not claimed by the defendant Comptroller to be taxable under the Act.

(k) All purchases which are made on the New York Stock Exchange must be completed by actual delivery of the stock in New York City. This is accomplished either by actual transfer and delivery of the shares of stock, or by due corporate transfer thereof; the delivery must be made on the second day (barring Saturday) on which the Exchange is open for business after the day of the floor transaction. Full payment for the stock is required to be, and is made simultaneously with delivery, the payment therefor and the delivery thereof, both being made in New York City.

(l) The rules of the Exchange require that delivery must be accompanied by a "sales ticket", which is a paper containing the date, the name of the seller (that is, the name of the floor member or member firm who acted as the seller on the Exchange), the name of the purchaser to whom the delivery is to be made (that is, the name of the plaintiff firm who acted as purchaser on the New York Stock Exchange), the number of shares and name of the stock to be transferred, the price per share, and the total consideration thereof. It is required that this "sales ticket" shall bear all stamps which are required in connection with the sale in question by the laws of the United States and by

the laws of the State of New York. The Federal Stamp Tax Act (26 U. S. C. A. Sec. 901) and Section 270 of the Tax Law of the State of New York, each impose an excise tax on the transaction, and pursuant to the provisions of such Federal and State Statutes, the requisite stamps are [fol. 91] affixed to such "sales ticket" and cancelled, before the delivery of the same. An example of such "sales ticket", which is one that was actually received by one of the plaintiff firms in connection with a purchase of stock, and to which the Federal and New York State Excise Tax Stamps were affixed, is attached hereto, made a part hereof and marked Exhibit 5.

(m) This "sales ticket" (Exhibit 5) is not claimed by the defendant Comptroller to be taxed under the Florida Act.

(n) On such a purchase, after the plaintiff firm has completed the transaction through the acceptance of delivery of the stock in New York City for the Florida customer, the plaintiff firm either holds the stock in New York for the account of the customer, or forwards it to him. That is accomplished, not by sending the stock to the Florida branch office and having that office delivery it to him in Florida, but by sending the stock registered mail direct from the New York office of the plaintiff firm to the customer in Florida. When the stock is so mailed to the customer, there is enclosed with it a form of receipt which is to be signed by the customer and returned to the New York office of the plaintiff firm by mail. This is termed "customer's receipt" and bears the name of the plaintiff firm, recites the enclosure of certain stocks which are briefly therein described, gives the name of the customer and serial number of his account, and contains a place for the signature of the customer and bears a direction that the same should be signed and returned to the firm. An example of such a customer's receipt is attached hereto, made a part hereof and marked Exhibit 6.

(o) The defendant Comptroller contends that a receipt given by a Florida customer for stock which has been thus [fol. 92] purchased for him is taxable under the Act, and the defendant Comptroller contends that a receipt given

by a Florida customer for stock which may be delivered to him through a Florida branch office of the plaintiff firms following its purchase for him, is taxable under the Act involved.

8. As to a sale of stock for a Florida customer:

(a) The steps taken by the plaintiff firms in making a sale of stock on the New York Stock Exchange for a Florida customer are substantially the same as those above recited with respect to the making of a purchase of stock.

(b) An order for the sale of stock is placed in the same manner. The form which such order takes, when it is made in writing, in a Florida branch office, is shown by the Exhibit attached hereto and made a part hereof, marked Exhibit 7.

(c) It is contended by the defendant Comptroller that such a written order by a Florida customer to his brokers to sell stock for him on the New York Stock Exchange (Exhibit 7) is taxable under the Florida Act.

(d) Following the receipt of the "order" to sell, the Florida branch office communicates the order over its private wire to its New York office, and thereupon the order is executed on the floor of the New York Stock Exchange, where a representative of the plaintiff firm enters into a contract for the sale of such stock with another floor member of the Exchange representing a person desiring to buy the same. On the day that such transaction takes place on the New York Stock Exchange an "exchange contract", such as was described above in the case of a purchase of stock, is filled out, delivered and exchanged between the parties to the transaction in New York. An example of [fol. 93] such exchange contract used by one of the plaintiff firms in such a transaction is attached hereto, made a part hereof and marked Exhibit 8.

(e) The defendant Comptroller does not contend that the exchange contract (Exhibit 8) is taxable under the Florida Act.

(f) Immediately following the making of the sale on the floor of the Stock Exchange, the New York City office of the firm so notifies the Florida branch office in which the order for the sale originated. This notice is made by tele-

graph over the firm's private wire, and is received and taken off by an employee of the broker on a typewriter in the Florida branch office in original and carbon copy form, and sets forth the time and date of the sale, the number of shares and name of the stock, the price at which sold and the serial number of the customer represented in the transaction. An example of such a telegraphic notice of the making of such sale is attached hereto, made a part hereof and marked Exhibit 9. Upon receiving such notice, the Florida branch office customarily in turn notifies the customer. This is done either orally, or by telephone, or by furnishing the customer with the original or a carbon copy of the telegraphic communication which has been received from the New York office of the firm. There is no contractual or other obligation on the Florida branch office to deliver to the customer either the original or a copy of the communication in question. In most instances such a written notice that the order has been executed is delivered to the Florida customer by the branch office, but in many instances it is not done.

(g) The defendant Comptroller contends that all such telegrams or copies thereof (Exhibit 9) which are delivered [fol. 94] by a Florida branch office to a Florida customer, are taxable under the Florida Act.

(h) The settled practice of the plaintiff firms, as a means of notifying the customer that his order has been executed on the New York Stock Exchange, is to mail to the customer from New York City, on the day of the transaction, a written form reporting the transaction, and which notice contains the name of the person to whom the stock has been sold, the number of shares and name of the stock, the price per share, the total price, the amount of the commission, the amount of Federal and New York State Stamp taxes to be paid thereon, the net proceeds of the sale and the name of the Florida customer. This notice of transactions is given to the customers, in addition to such other notices as they may be given or which may be received by them through a Florida branch office or otherwise. An example of such notice or report which is mailed from New York City by the plaintiff firms to a Florida customer, is attached hereto, made a part hereof, and marked Exhibit 10.

(i) It is not contended by the defendant Comptroller that such mailed notice or report of sale (Exhibit 10) is taxable under the Florida Act.

(j) The delivery of the stock is made for and on behalf of the Florida customer by the plaintiff firm, in New York City, to the purchasing broker or brokerage firm, on the "delivery day". Simultaneously with the delivery of the stock, the net proceeds of the sale are received in New York City by the plaintiff brokerage firm for and on behalf of the Florida customer.

(k) In connection with the delivery of stock which the plaintiff firm makes in New York City for the Florida cus-
[fol. 95] tomer, there is delivered a sales ticket to which there are first affixed and cancelled the requisite amount of Federal and New York State Excise Tax Stamps. The form of such "sales ticket" has been described above in setting forth the procedure relating to a purchase of stock, and a copy of such a sales ticket, the original of which was actually delivered in New York City by one of the plaintiff firms in such a transaction, is attached hereto, made a part hereof and marked Exhibit 11.

(l) It is not contended by the defendant Comptroller that such a sales ticket (Exhibit 11) is taxable under the Florida Act.

9. When a Florida customer of one of the plaintiff firms delivers to the Florida branch office a sum of money to be used to pay for stock which is to be purchased for him or to be used by the brokers in obtaining stock for delivery in connection with a sale of stock which is to be made for him, a simple form of receipt is given by the Florida branch office to the customer. The practice is to make the receipt in triplicate, deliver the original to the customer, retain one copy in the branch office, and forward the other copy to the New York office. The receipts so given by the branch office to the customer are merely temporary receipts, and formal acknowledgment of the delivery of such funds to the firm is made in due course by mail to the customer by and from the New York office of the firm. The receipt given by the Florida office merely shows the date, the amount received, a notation that it is held for the account of a particular customer, and an appropriate signature on behalf of the firm.

A form of such receipt is attached hereto, made a part hereof, and marked Exhibit 12.

[fol. 96] 10. When, in connection with such transactions made on the New York Stock Exchange by a plaintiff firm for a Florida customer, the customer furnishes the Florida branch office with certificates of stock, the same form of receipt is delivered to him by the Florida branch office (Exhibit 12). In that instance, the receipt bears the description of the stock so delivered to the Florida branch office, and specifies the account for whom the same is to be held by the firm.

11. It is contended by the defendant Comptroller that such a receipt (Exhibit 12) when given by a Florida branch office to a customer upon the delivery of stock by the customer to the firm's branch office as aforesaid, is taxable under the Florida Act.

12. Accurate and complete book records of the transactions on behalf of all Florida Customers and of the debits and credits of their accounts are kept in the New York City offices of the plaintiff firms. Records of such matters are likewise kept in the branch offices, but are recognized and considered by the plaintiff firms as being approximations only and as being incomplete, and such approximate records are kept in the Florida branch office as a convenience to the operatives of the branch office, and as a convenience in informing customers of the approximate status of their accounts, and are not relied on by the plaintiff firms in any particular respect without comparison and confirmation thereof from the records of the New York office. An example of an actual ledger sheet of a Florida customer, as kept in the New York office of the plaintiff firm of Thomson & McKinnon, of the account of an actual Florida customer of the Miami, Florida, branch office of the firm (the name of such customer being, however, purposely omitted therefrom), is attached hereto, made a part hereof, and marked Exhibit 13. This is in the same form as the rec-[fol. 97] ords of the accounts of its customers which are kept in the New York City office of the plaintiff firm of Fenner & Beane.

13. It is not contended by the defendant Comptroller that these records of the transactions for Florida custo-

mers which are kept in the New York offices of the firms, are taxable under the Florida Act.

14. The Miami, Florida, branch offices' corresponding record of the account of the same customer is also attached hereto, made a part hereof and marked Exhibit 14, and is the same in all material respects as those kept by the branch office of the other plaintiff firm.

15. It is contended by the defendant Comptroller that such records of trades for a Florida customer which are kept in Florida branch offices (an example of which is Exhibit 14) are taxable under the Florida Act as to each transaction recorded thereon.

16. No accounting "statement", or report, is furnished to the Florida customers from the records which are maintained in the Florida branch offices, but regular monthly statements of the accounts of the Florida customers are prepared from the office records of the same as kept in New York City, and mailed to all Florida customers from New York City.

17. While, as particularly stated above, the defendant Comptroller contends that a number of the above described papers and writings which are utilized in connection with the making of a purchase or sale of stock on the New York Stock Exchange for a Florida customer, are each taxable under the Florida Act, it is conceded by the defendant Comptroller that as to a particular purchase or sale of stock, not more than one of such papers, instruments or records relating thereto, which he contends are taxable, shall bear the tax.

[fol. 98] 18. The plaintiffs contend that such instruments, papers, writings or documents above described as being used in connection with the purchase or sale, in New York City on the New York Stock Exchange, of stocks for a Florida customer, are not taxable under the Florida Act, and the plaintiffs further contend that if the Florida Act be construed to apply to any of the same, the Act then is in violation of provisions of the Federal and Florida State Constitutions in the respects alleged in the bill of complaint in this case.

19. A Florida customer who is not trading on a marginal basis does not sign any contract preliminary to trad-

ing, for instance such as the "customer's agreement and consent" which is signed by marginal customers and herein below described, an example of which is attached as Exhibit 15, and there is no obligation on the part of the brokers except the obligation implied on the part of the brokers to exercise reasonable care in the discharge of their duties as brokers, and the implied understanding that the transaction will be subject to the rules of the New York Stock Exchange, which rules, among other things, are designed to protect the customer with respect to any monies or stocks which he may deposit with the brokers, or which brokers may receive for his account, and to assure him the safe return, in due course of the undertaking, of the monies or stocks to which he is entitled.

20. In cases where the Florida customer has a marginal account, exactly the same relationship of principal and broker exists between the customer and the brokers with respect to execution of the customer's orders for the purchase and sale of stock. Before opening a marginal account, the customer signs the regular form of customer's agreement, an example of which is the "Customer's Agreement and Consent" used by the plaintiff firm of Thomson & McKinnon in such connection, a copy of which is attached [fol. 99] hereto, made a part hereof and marked Exhibit 15. This instrument is in all material respects similar to that used in the same connection by the plaintiff firm of Fenner & Beane.

21. In this suit, the defendant Comptroller does not contend that such contract (Exhibit 15) is subject to any tax under the Florida Act.

22. This "Customer's Agreement and Consent" (Exhibit 15) is an agreement which sets forth certain terms and conditions under which marginal transactions for the account of the customer are to be handled. It does not provide for the purchase or sale of any particular stock. It is general in its terms and remains in effect so long as the customer carries an account with the brokers, applying not to any present transaction but to such future transactions for the purchase or sale of stocks as the customer may request the brokers to make upon his behalf.

23. Where a customer has signed such an agreement and desires to purchase certain stock on margin on the New

York Stock Exchange, his order will be executed by the brokers without requiring him, at the time of the giving of his order, to deposit the full consideration which is to be paid for the stock at the price specified. On this marginal basis, he is required to supply a substantial portion of such purchase price (the minimum fraction required to be deposited being fixed by the rules of the Stock Exchange). The balance of the purchase price of the stock which is in excess of the deposit mentioned is then, at the time the purchase is made on the New York Stock Exchange, advanced by the brokers for and on behalf of the customer. In making the purchase, the brokers are required to pay the full purchase price to the other brokerage firm from whom they buy the stock in New York City. Such payment in full for the stock purchased is made at the time delivery of the stock is made in New York City. [fol. 100] As collateral for the portion of the purchase price of the stock which has been advanced by the brokers, the brokers hold the stock which is delivered to them in the purchase transaction in New York City for the customer's account. The customer may thereafter obtain the stock by paying to his brokers the amount which has been so advanced by them, or he may instruct the brokers to sell the stock, in the event of which sale the proceeds will be applied first to repaying the brokers for the amount advanced as aforesaid.

24. Where a Florida customer dealing on a marginal basis places an order with his brokers for the sale of stock on the New York Stock Exchange, the procedure by which the sale is accomplished is exactly similar to the procedure in the case of sales by a customer not having a marginal account, except in the case of a marginal customer, the proceeds of the sale are ordinarily credited to him in his account with the brokers, instead of being remitted to him at once by the brokers.

25. It may be, and in some instances is days and months, after a customer signs and delivers such an agreement to the brokers, before any transaction is handled by the brokers for the customer in such account. It may be that no transaction will ever be handled for a customer signing a customer's agreement. Loans which are made by the brokers to customers trading on a marginal basis are not made at the time of the signing of such agreement, but are made

after the making and delivery of such agreement and as an incident to the consummation of a purchase of stock for the customer, at the respective times that the brokers are required to pay the purchase price of stocks purchased; that is, at the times when they receive delivery of stocks for the customer upon the making of purchases for [fol. 101] him. The customers who sign such an agreement are not indebted to the brokers at the time that such an agreement is signed and delivered, and no money is loaned to the customers by the brokers for or upon the delivery to them of such an agreement. Any money which is loaned to a marginal customer by the brokers is loaned not by virtue of said agreement, but is loaned, as aforesaid, as an incident to the purchase of stock for such customer, as thereafter ordered. However, it is essential to the plaintiff brokers and to all other brokers engaged in a similar business that loans should not be made by them to customers for the purchase of stocks on a marginal basis unless the customer shall have signed and delivered to them an agreement substantially the same as Exhibit 15, giving the brokers certain privileges as to the handling and pledging of the stocks of such a customer, the same being for the protection of the brokers and rendered necessary because of certain legal restrictions by which they would not be enabled to deal with the stock held for a marginal customer in the respects permitted by the customer's agreement without his consent as expressed therein.

26. The Honorable J. M. Lee has been Comptroller of the State of Florida since January 3, 1933. His predecessor in such office was the Honorable Ernest Amos, who held such office as Comptroller in the year 1931, when the Florida Act in question went into effect. While acting as Comptroller between the time of the enactment of the statute and the end of his term of office on January 3, 1933, the prior Comptroller, Ernest Amos, construed such Act as shown by exhibits 16 to 19, inclusive, attached hereto. The demand and effort of the present defendant Comptroller to collect such tax on the transactions, instruments and documents in question was not made or asserted until [fol. 102] approximately six months after he went into office. The construction placed on the Act by the prior Comptroller, Ernest Amos, is shown and reflected by cor-

respondence which passed between him and attorneys of record for the plaintiffs in this case, including letters exchanged between them on October 20 and 27, 1931, and telegrams exchanged between them dated January 5 and 6, 1932, true copies of which are attached hereto, made part hereof and marked Exhibits 16, 17, 18 and 19 respectively, and the prior Comptroller's construction thereof remained unchanged thereafter, until changed by the present Comptroller.

27. The duty of administering the Act in question (Chapter 15,787, Laws of Florida 1931) is placed on the Comptroller of the State of Florida. The penalty for making or accepting an instrument or document required by the Act to be stamped, without the stamp tax being paid is by the Act declared to be a misdemeanor. Such misdemeanor (by Section 7104, Comp. Gen. Laws of Florida, 1927) is punishable by a fine not to exceed $200.00, or imprisonment not to exceed ninety days, or both, in the discretion of the Court. The plaintiffs in due course of the business through their Florida branch offices, handle each day a great many of the documents hereinabove described, and which are contended by the defendant Comptroller to be subject to tax under said Act.

28. Paragraph 25 of the answer of the defendant Comptroller reads as follows:

"And further answering the bill of complaint, this defendant now offers to receive tax payments from the plaintiffs on account of the taxes required by the terms of the said Documentary Stamp Tax Act as hereinabove in numbered paragraph 4 hereof set forth, and to impound the same and securely keep and preserve the same *and securely* [fol. 103] *keep and preserve the same* pending the ultimate and final decision on the law side of a court of last resort, either State or Federal, provided that such suit be filed immediately and prosecuted with all reasonable diligence, and provided that such taxes be paid from day to day as the same become due; and upon the ultimate decision, should it be adjudged that said taxes, or any of them, were illegally exacted or collected, to repay the same in accordance with such final judgment."

The defendant testifies in this case to the same effect as the matters set forth in Paragraph 25 of his answer

above quoted. (Although such matters are not conceded by the plaintiffs to be the fact.)

29. The Comptroller has in his answer (paragraph 15) averred, and it is the defendant's testimony in this case (although not conceded by the plaintiffs to be the fact), that his enforcement of said Act would not be carried out in any unreasonable, arbitrary or oppressive manner. However, (although not conceded by the defendant to be the fact) it is the testimony of the plaintiffs that the method of enforcement of said Act by penalty as provided therein, if strictly and vigorously adminstered, would afford an opportunity for many separate arrests, fines and imprisonments of the plaintiffs or their employees, each day that such business is carried on, if the instruments referred to herein or any of them should be construed to be taxable under the Act in question.

30. Stamps required by said Act to be affixed to documents may be purchased in any amount desired, in advance of their use for such purpose. As construed by defendant the Act would require such stamps to be affixed to a document in connection with each separate purchase and sale transaction which is made as described herein. Each busi- [fol. 104] ness day each plaintiff firm handles hundreds of such transactions which originate in their Florida branch offices.

Dated March 9th, 1934.

Charles A. Carroll, Shutts & Bowen, by Charles A. Carroll, Joseph F. McPherson, all of Miami, Florida, Attorneys for Plaintiffs. Cary D. Landis, Attorney General of Florida, by Robert J. Pleus, Assistant Attorney General; Robert J. Pleus, Assistant Attorney General of Florida; H. E. Carter, J. V. Keen, Assistant Attorneys General of Florida, all of Tallahassee, Florida, Attorneys for Defendant.

PRIVATE WIRE Time_____

THOMSON & McKINNON

Nov. 8 1933

BUY 100 U. S. STEEL 43.

#2437

1033AMf

EXHIBIT 1

FEB 6 1934

No. 71 New York,_____193

STOCK CLEARING CORPORATION (Night Clearing Branch)

For Account of THOMSON & McKINNON

Receive from_____
(Deliverers Name and Number Stamp)

BROKER	Line No.	RECEIVE FROM	SHARES	SECURITY	PRICE	AMOUNT
TOOLIN	614	SCHOLLE	100	AL AMER INTL	10/1/8	101250
Deliverers	Line No.					

EXHIBIT 2

PRIVATE WIRE Time_____

THOMSON & McKINNON

November 8, 1933 19____

BOUGHT 100 U S Steel 43

#2437

127 amf

Exhibit 3

FEB 6 1934

Stock Department

THOMSON & McKINNON
BROKERS
11 Wall Street

New York,_____193

We have this day BOUGHT for your account and risk on the New York Stock Exchange

BROKER	Line NO.	OF WHOM BOUGHT	SHARES	ABBREV.	DESCRIPTION	PRICE	AMOUNT	COMM.			TOTAL AMOUNT	FOR WHOSE ACCOUNT
TOOLIN	614	SCHOLLE	100	AL	AMER INTL	10 1/8	101250	1250			102500	RICHARD DOE

Thomson & McKinnon

E. & O. E.

Per_____

Exhibit 4.

No. 205

New York, OCT 23 1933 193

H. CONTENT & CO.
111 Broadway New York

Subject to the Revenue Act of 1926, and Regulations made in accordance therewith.

SOLD TO

BROKER	Line No.	SOLD TO	SHARES	SECURITY		PRICE	AMOUNT
SP	164	THOMSON	100	MTY	MC INTYRE	33 1/2	335000

Receivers Line No.

U STOCK S Documentary CONTENT & CO. CENTS TRANSFER I R

U S STOCK Documentary - 20 - CENTS TRANSFER I R

STATE OF NEW YORK 4 DOLLARS stock transfer

Exhibit 5.

THOMSON & McKINNON
11 Wall Street

CUSTOMER'S RECEIPT

Enclosed please find securities as follows:

New York, 193

DELIVERED TO	NUMBER OF SHARES	DESCRIPTION	ACCOUNT	NUMBERS
	100	COLUMBIA GAS & ELECTRIC CORP	JANE DOE M1 4106	CN 225211

MISS JANE DOE
700 N. E. 63RD STREET
MIAMI FLORIDA

Received the above mentioned securities

193

IMPORTANT: Kindly sign and return at once.

Exhibit 6.

PRIVATE WIRE Time_____

THOMSON & McKINNON

Nov. 8 1933

SELL 100 U S STEEL 43¼

#2185

1022a

Exhibit 7

No. 71 New York, FEB. 6 1934 193

STOCK CLEARING CORPORATION (Night Clearing Branch)

For Account of THOMSON & McKINNON,

Deliver to_____
(Receivers Name and Number Stamp)

BROKER	Line No.	DELIVER TO	SHARES.	SECURITY	PRICE	AMOUNT
TEFFT	360	DRYSDALE	100	AFW AM FOR POW	13	130000

Receivers Line No.

Exhibit 8.

PRIVATE WIRE Time_____

THOMSON & McKINNON

November 8, 1933 19___

SOLD 100 U S Steel 43¼

#2185

1103amf

Exhibit 9

Stock
Department

THOMSON & McKINNON
BROKERS
11 Wall Street

New York, FEB 6 1934 193

We have this day SOLD for your account and risk on the New York Stock Exchange

BROKER	Line No.	TO WHOM SOLD	SHARES	ABBREV.	DESCRIPTION	PRICE	AMOUNT	COMM.	STATE	FEDERAL	TOTAL AMOUNT	FOR WHOSE ACCOUNT
BEB	388	MEEHAN	100	CV	COMM SOLVENTS	341/8	341250	1500	400	500	338850	JOHN ROE SX 763

E. & O. E.

Thomson & McKinnon

Per_____

Exhibit 10

No. 71

New York, FEB 6 1934 193

THOMSON & McKINNON
11 Wall Street New York

Subject to the Revenue Act of 1926 and Regulations made in accordance therewith

SOLD TO_____

BROKER	Line No.	DELIVER TO	SHARES	SECURITY	PRICE	AMOUNT
BEB	388	MEEHAN	100	CV COMM SOLVENTS	341/8	341250
Receivers	Line No.					

Exhibit 11

Form 26

THOMSON & McKINNON

_____19__

A 2000 RECEIVED FROM_____

This is a Memorandum Receipt.
The Original acknowledgment will be made from our New York Office.

Exhibit 12

[fol. 111]

Form No. 2.

Sheet No. —.

Account No.—.

8—944

John Doe, Miami, Florida.

EXHIBIT 13

Thomson & McKinnon

Date	Securities Bought or received	Securities Sold or delivered	Description	Price	Debit	Credit	Balance	Date
1933			Balance					
Dec. 31	Long	...	...	....	.....	.....	267.97 Cr*	Dec. 31, 33
.....	100	...	City Stores	....	.....	.....	.....	.....
Jan. 4	...	...	Paid at Miami	....	100.00	.....	167.97 Cr.*	Jan. 3, 34
Jan. 8	...	100	City Stores	1	.....	85.50 Cr.	253.47 Cr.*	Jan. 8, 34
Jan. 15	100	...	Chgo. Milw. & St. Paul Pfd.	7¾	782.50	.....	529.03	Jan. 15, 34
Jan. 15	...	...	Trf. from Commodity a/c	....	.....	212.30 Cr.	316.73	Jan. 15, 34
Jan. 18	...	100	Chgo. Milw. & St. Paul Pfd.	9	.....	885.50 Cr.	568.77 Cr.*	Jan. 18, 34
Jan. 19	100	...	Chgo. North West	9	907.50	.....	338.73	Jan. 19, 34
Jan. 20	...	...	Check	....	.....	350.00 Cr.	11.27 Cr.*	Jan. 20, 34
Jan. 22	100	...	Chgo. Milw. & St. Paul Pfd.	9½	957.50	.....	.....	.....
.....	...	100	Chgo. North West	9¼	.....	910.50 Cr.	35.73	Jan. 22, 34
Jan. 22	...	...	Cash	....	.....	100.00 Cr.	64.27 Cr.*	Jan. 22, 34
Jan. 23	100	...	Chgo. North West	10⅛	1,025.00	.....	960.73	Jan. 23, 34
Jan. 25	...	100	Chgo. North West	10⅝	.....	1,043.00 Cr.	82.27 Cr.*	Jan. 25, 34
Jan. 25	...	...	Paid at Miami	....	50.00	.....	32.27 Cr.*	Jan. 25, 34
Jan. 29	...	100	Chgo. Milw. & St. Paul Pfd.	10⅛	.....	993.00 Cr.	1,025.27 Cr.*	Jan. 29, 34
Jan. 31	100	...	Chgo. Milw. & St. Paul Pfd.	10	1,012.50	.....	12.77 Cr.*	Jan. 31, 34
Jan. 31, 34	Long	...	Chgo. Milw. & St. Paul Pfd.	....	.....	.....	.....	.....
.....	100	...	.....	....	.....	.....	.....	.....

* Red in copy.

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[fol. 112]

EXHIBIT 14

Made by Irving-Pitt Division, Wilson-Jones Co., U. S. A.

Mr. Foster's Store

(The Foster & Reynolds Co.)

(100 E. Flagler St., Phone 26556)

Miami, Fla.

Sheet No.—.
Account No. 2472.
Rating:—. Credit Limit:—. Name: John Doe.
Business:—. Address: Miami, Fla.

Loose HP Leaf, Size 1017, Form 5.

Date 1933	Items	Folio	Debits	Date 1933	Items	Folio	Credits
Dec. 31....	Long 100 Cities Stores A.....	.....	.....	Dec. 31..	Credit Balance.....	.....	267.97
	Long 2 May Corn.....	505/8	.....	" 31..	Con. Credit Balance.....	.....	164.90
1934				1934			
Jan. 2....	2 May Oats.....	375/8	.....	Jan. 3..	2 May Corn.....	52	.....
" 4....	Funds.....	.....	100.00	" 12..	2 May Oats.....	377/8	.....
" 11....	100 St. Paul Pfd.....	73/4	782.50	" 4..	100 City Stores.....	1	85.50
" 17....	100 Chi. Northwestern.....	9	907.50	" 16..	100 St. Paul Pfd.....	9	885.50
" 18....	100 St. Paul Pfd.....	91/2	957.50	" 17..	100 Chi. Northwestern.....	91/4	910.50
" 19....	100 Chi. Northwestern.....	101/8	1,025.00	" 19..	Ck. Flo. Nat'l Bk. & Trust.....	.....	350.00
" 25....	Funds.....	.....	50.00	" 22..	Currency.....	.....	100.00
" 29....	100 St. Paul Pfd.....	10	1,012.50	" 23..	100 Chi. Northwestern.....	105/8	1,043.00
				" 25..	100 St. Paul Pfd.....	101/8	993.00

[fols. 113–116] Exhibit 15 omitted, see exhibit No. 11, printed side page 44 ante.

[fol. 117] EXHIBIT 16

Letterhead of Shutts & Bowen, Miami, Florida

October 20, 1931.

Hon. Ernest Amos, Comptroller of the State of Florida, Tallahassee, Florida.

Re Documentary Stamp Tax, Senate Bill 196-XX

DEAR SIR: We have been asked by one of our clients, Thomson & McKinnon, a partnership doing a stock and bond brokerage business, to render it an opinion concerning the effect of the above law on its transactions as brokers, and their liability thereunder.

In pursuance of our client's request, we have made a careful investigation with reference to the interpretation of this law, and have arrived at certain conclusions which we hereinafter set forth. However, before rendering this opinion to our client, we would appreciate very much your views as to the correctness of our conclusions.

Our client is a partnership which operates in Florida through several branch offices or agencies. The business of these agencies consists wholly of acting as agents for buyers and sellers of stocks and bonds, and no person in the service of Thomson & McKinnon is employed on a commission basis, but all are on a straight salary. None of these stocks and bonds, however, are bought or sold in the State of Florida, all purchases and all sales being made in the State of New York.

The mechanics of the purchase of a certificate of stock by a purchaser located in Florida, through one of the branch agencies of Thomson & McKinnon are as follows:

The prospective purchaser delivers to one of the employees of a branch agency of Thomson & McKinnon sufficient money to pay for the stock he contemplates purchasing, together with an order which reads substantially as follows "Buy 100 shares of U. S. Steel at market price (Signed) John Doe." This order and the money are then

transmitted by the branch agency to the principal office of Thomson & McKinnon in New York State. Upon receipt of the order by Thomson & McKinnon in New York State, they buy the stock in the New York market for the Florida purchaser, charging him a certain fee for their services, and send the purchaser notice that the purchase has been made for him. If the Florida purchaser requests delivery of the certificates, they are then forwarded by Thomson & McKinnon in New York directly to the purchaser in Florida, by United States mail. If delivery is not requested, [fol. 118] the certificates are held by Thomson & McKinnon in New York subject to disposition by the purchaser. A great percentage of transactions are made without delivery of the certificates, Thomson & McKinnon usually being advised to sell for the recent purchaser within a short time after the consummation of the transaction, in which latter event no certificate is ever delivered in the State of Florida, the only result of such a transaction being the delivery of money.

Under the foregoing circumstances and assuming that none of the stock dealt in is stock of Florida corporations, we have reached the conclusion that neither our client nor its employees would be liable under the stamp tax act for failure to affix stamps or see that they are affixed, because:

(1) A statute of Florida cannot operate beyond the territorial limits of the State, and neither Thomson & McKinnon nor the purchaser can require a foreign seller of such stock certificates to make and deliver to the buyer or to any one else a memorandum of such sale; hence, neither Thomson & McKinnon nor its employees could be liable for that over which they have no control.

(2) Stock certificates are a species of property which s a common subject of barter and sale, and hence the subject of interstate commerce. Under the circumstances outlined above, where a certificate is delivered, the transaction is one of interstate commerce, because it is essentially a transaction where a resident of one State forwards money to a resident of another State, and receives in return by transportation between those States a thing of barter and sale, the fact that the transaction is made through an agent being immaterial. Consequently, the Florida stamp tax cannot

apply, because of a State's inability to tax interstate commerce. There might be some contention as to whether or not a stock certificate is a subject of interstate commerce; however, we feel that in view of the decision of the United States Supreme Court in the case of Champion v. Ames, reported in 47 L. Ed. at page 492, wherein lottery tickets, which are certainly nothing more than evidence of a mere contingent right, were held to be subjects of interstate commerce, stock certificates are a subject of interstate commerce.

(3) The order above referred to which the prospective purchaser hands to an employee of Thomson & McKinnon, ordering the purchase of certain stock for him, is not a memorandum of a sale nor an agreement to sell, nor is it any evidence of a transfer, but simply an authorization of the principal to his agent to offer certain things for sale.

(4) The notice which is forwarded by Thomson & McKinnon to the Florida purchaser, notifying him that the purchase has been made for him, is not an agreement to sell, nor a memorandum of the sale, nor a transfer of the title, but is nothing more than a notification by an agent to his principal that the principal's instructions have been carried out.

[fol. 119] (5) The delivery of the stock certificates is not made by any person in Florida, but as above noted delivery is made by parties in New York State directly to the purchaser in Florida, by mail.

The mechanics of a sale of stock certificates by an owner located in Florida through one of the branch offices of our client are practically the same as the mechanics of a purchase, to-wit:

If a Florida owner has certificates in his possession which he desires to sell, he hands them to a Florida employee of Thomson & McKinnon, together with a written order directing Thomson & McKinnon to sell the certificates at the market, or at a fixed price. This order to sell is then transmitted to the principal office of Thomson & McKinnon in New York State. The certificates are then offered for sale in New York State, the certificates being forwarded to New York State from Florida, the purchase money being forwarded from New York State to Florida.

Under these circumstances, assuming that none of the stock dealt in is stock of Florida Corporations, we have also concluded that neither Thomson & McKinnon nor its employees would be liable under the stamp tax act, for failure to affix stamps or see that they are affixed, because:

(1) The seller could not be required to make a memorandum of sale at the time he delivers the certificates to Thomson & McKinnon, because at that time no sale has been made, the transaction having proceeded no further than an offer to sell.

(2) When the order to sell is transmitted to New York State, all control over the Florida seller is lost by the local representatives of Thomson & McKinnon, and they could not enforce the making of a memorandum of sale by the seller after the sale is made, because their only function is to forward the certificates and the offer to sell them, the sale being made in New York State by agents of the seller in that State.

(3) As hereinbefore noted, the transaction is one of interstate commerce, and hence not taxable by the State of Florida.

(4) The order or authorization handed the employee of Thomson & McKinnon by the prospective seller authorizing the sale cannot be construed to be an agreement to sell, because the purchaser, if there be one, cannot be known, nor is it a memorandum of a sale, because no sale has yet been made.

(5) The fact that the certificate was delivered by the owner to an employee of Thomson & McKinnon for the purpose of selling it in New York State for the owner would not make that delivery taxable under the act, because the act only purports to tax a delivery which occurs in consequence of a sale of the certificate or an interest therein; the delivery of the certificate to Thomson & McKinnon [fol. 120] passes no title whatever, the title remaining in the Florida seller until the actual sale in New York State.

We feel that the conclusions reached by us under the circumstances outlined above—that there would be no liability under the law being considered—are well founded and supported by the several reasons noted.

We shall appreciate your advising us of your views in the matter.

Very truly yours, Shutts & Bowen, by H. N. Boureau.

HNB. jm.

[fol. 121] EXHIBIT 17

Letterhead of Shutts & Bowen, Miami, Florida

October 27, 1931.

Hon. Ernest A. Amos, Comptroller of the State of Florida, Tallahassee, Florida.

DEAR SIR: We have your letter of October 24, 1931, in answer to our communication of October 20th in relation to the stock brokerage firm of Thomson & McKinnon, of New York, who have branch offices in Florida.

On the facts as set forth in that communication, our office concluded that the documentary stamp tax law did not apply to transactions of the nature stated in our letter. Before advising our client to that effect, we desire an expression from you as to whether or not your office agrees with our conclusion.

We would appreciate it if you would review the facts contained in our letter of October 20, 1931, as we feel your letter as a whole does not answer our inquiry, although its third paragraph may in effect be an answer, though our inquiry was broader. Briefly, our view is that the documentary stamp tax does not apply to transactions in the nature of the sale or purchase of stocks, other than Florida stocks, on the New York Stock Exchange or similar exchanges, although the order for the sale is given through a Florida branch. Our letter of October 20th set forth in detail the reasoning by which we reached such a conclusion.

Our inquiry was intended to be directed to the sales of stock under such circumstances, and not to the actual issuance of the certificates, and arose because of the provisions of the first few lines of the third paragraph of Schedule A of the Act.

Thanking you for your courteous and kind attention to this matter, we are

Respectfully yours, Shutts & Bowen.

PGP-MR.

[fol. 122] EXHIBIT 18

Postal Telegraph Day Letter

Miami, Florida, January 5, 1932.

Hon. Ernest Amos, Comptroller, Tallahassee, Florida.

Re documentary stamp tax Thomson and McKinnon New York stock brokers have local offices in Florida where orders for the purchase and sale of stock in New York are handled on the various stock exchanges stop when a purchase or sale has been made in New York for a customer in Florida that customer is handed a written statement similar to the following quote sold one hundred shares United States Steel at forty account one twenty three unquote the account number designates the customer stop our letters to you of October twentieth and twenty seventh set up our conclusion as being that stamp tax did not apply to such transactions the reasons therefor being set up in said letters stop your answers of October twenty fourth and November twenty fifth did not directly answer our question but by implication we inferred that you agreed with our conclusion stop it appears to us that the notice given by Thomson and McKinnon is not a memorandum of sale as the act contemplates to be taxable but a mere notice that a purchase or sale has been effected in New York in accordance with the customers instructions stop in order that our client might not hereafter be confronted with complications as to the correctness of our interpretation by your office we would appreciate it if possible if you would advise us whether in your opinion we are correct in our conclusion

Frank B. Shutts.

Chg. Shutts & Bowen, Day Letter.

[fol. 123] EXHIBIT 19

Postal Telegraph

JEB 123 39. Tallahassee, Fla. 6 930A

1932, Jan. 6. A. M. 9/36.

Frank B. Shutts, First National Bank Bldg., Miami, Fla.:

Answering telegram no Florida documentary stamp tax required on such stock sale transactions as mentioned in

your letter October twentieth last except it be on stock of Florida corporations Stop Thompson and McKinnon qualified as dealers under securities act.

Ernest Amos, Comptroller.

[fol. 124] IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA

In Equity. No. T-14

JOHN P. BICKELL et al., Co-partners Trading and Doing Business under the Firm Name and Style of Thompson & McKinnon, and Alpheus C. Beane et al., Co-partners Trading and Doing Business under the Firm Name and Style of Fenner, Beane & Ungerleider, Plaintiffs.

vs.

J. M. LEE, as Comptroller of the State of Florida, Defendant

FINAL DECREE GRANTING PERMANENT INJUNCTION—Filed March 10, 1934

This cause coming on for final hearing before this Court composed of the undersigned three Judges, convoked pursuant to Section 266 of the Judicial Code, due and proper notice having been given of the time and place of such hear-[fol. 125] ing; and a stipulation of the facts and evidence having been filed herein, and counsel for the respective parties having been heard, it is, therefore, found and decreed by this Court as follows:

1. The facts and matters set forth in the said stipulation of facts are adopted as the facts of this case and in our opinion sustain the material allegations of the bill of complaint as amended.

2. The facts as found in the opinion of this Court previously filed and adopted, and which was rendered in connection with the granting of the interlocutory injunction herein, are hereby adopted as the findings of this Court on final hearing.

3. The conclusions of law as contained and set forth in the aforesaid opinion are hereby made the conclusions of

law of this Court upon final hearing, except as to the marginal customers agreements being a written obligation to pay money and taxable under the Act in question. This exception is made because it appears from the stipulation of facts, and is conceded by counsel for defendant, that no tax is due thereon under said Act.

It is, therefore, ordered, adjudged and decreed that the interlocutory injunction heretofore granted herein, be, and the same is, hereby made permanent, and that the defendant, J. M. Lee, as Comptroller of the State of Florida, and his agents, servants, employees and attorneys, and any and all officers of the said State acting by, through or under his direction or administration, be and they are hereby permanently and perpetually restrained and enjoined from enforcing the Florida Stamp Tax Act, being Chapter 15,787, [fol. 126] Laws of Florida, 1931, against the plaintiffs, through demanding or requiring that any tax provided for under said Act be paid with respect to or by reason of any written communication, document or memorandum which may have been or may hereafter be delivered, passed or exchanged, by the plaintiff brokers or their employees to their Florida customers, or by their said customers to the plaintiffs or any of their employees, in connection with or in any manner related to the transactions for the purchase and sale of stocks or securities on Exchanges located outside of the State of Florida, which have been, or shall hereafter be made by the plaintiff brokers, or any of their servants or employees, for or on behalf of any customers, who in Florida have requested or ordered the same to be made, or who shall request or order the same to be made, and from levying any such tax provided for or contemplated by said Act, upon any books, ledgers, records, or memoranda in the possession of the plaintiffs or their employees in the State of Florida, relating to their acts and business in connection with the purchase or sale of any stocks or securities on Exchanges located outside the State of Florida for or on behalf of their customers, and which purchases or sales shall have been or shall be made by them in accordance with the requests, directions or orders to them by their customers, and from enforcing or causing to be enforced any penalties provided by said Act against the plaintiffs or any of their servants, agents or employees.

Done and ordered at Pensacola, Florida, this 10th day of
[fol. 127] March, A. D. 1934.

N. P. Bryan, U. S. Circuit Judge. Alexander Akerman, U. S. District Judge. Wm. B. Sheppard, U. S. District Judge.

[fol. 128] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR THE ALLOWANCE OF AN APPEAL—Filed March 28, 1934

J. M. Lee, as Comptroller of the State of Florida, defendant in the above entitled cause, feeling himself aggrieved by the final order or decree, of the statutory court convoked under Section 266 of the Judicial Code, entered on the 10th day of March A. D. 1934, prays an appeal therefrom to the Supreme Court of the United States.

The particulars, wherein he considers the final order or decree erroneous, are set forth in the assignment of errors on file in this cause to which reference is hereby made.

[fol. 129] Presented herewith is a typewritten statement particularly disclosing the basis upon which it is contended that the Supreme Court of the United States has jurisdiction upon appeal to review the final decree in this cause and reference to the statement is hereby made for the contents thereof.

He prays that a transcript of the record, proceedings, and papers on which the final order or decree was made and entered, duly authenticated, may be transmitted forthwith to the Supreme Court of the United States.

Cary D. Landis, Attorney General of the State of Florida; H. E. Carter, Assistant Attorney General; Robert J. Pleus, Assistant Attorney General; J. V. Keen, Assistant Attorney General, All of Tallahassee, Florida, Solicitors for Defendant.

[fol. 130] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS—Filed March 28, 1934

Comes now J. M. Lee, as Comptroller of the State of Florida, Defendant in this cause, and files the following Assignment of Errors upon which he will rely in the prosecution of the appeal from the Final Decree made and entered in this cause on the 10th day of March, A. D. 1934, and says that the Court erred in the following respects;

First Assignment of Error

The Court erred in failing to find that there is a complete [fol. 131] and adequate remedy and relief at law afforded to the Plaintiffs, under the provisions of the statutes of the State of Florida and under the decisions of the Supreme Court of the State of Florida, and that Plaintiffs having failed and neglected to avail themselves of such remedy or relief can not now be heard in equity.

Second Assignment of Error

The Court erred in entering its Final Decree on March 10, A. D. 1934, wherein it permanently and perpetually restrained and enjoined the defendant from enforcing the provisions of Chapter 15,787, Laws of Florida, Acts of 1931, as applied to documents, instruments or memoranda as illustrated by Exhibit 3 in the Stipulation of Facts as appears on page 106 of the (typewritten) transcript of the record.

Third Assignment of Error

The court erred in entering its Final Decree on March 10, A. D. 1934, wherein it permanently and perpetually restrained and enjoined the defendant from enforcing the provisions of Chapter 15,787, Laws of Florida, Acts of 1931, as applied to documents, instruments or memoranda as illustrated by Exhibit 6 in the Stipulation of Facts as appears on page 107 of the (typewritten) transcript of the record.

Fourth Assignment of Error

The Court erred in entering its Final Decree on March 10, A. D. 1934, wherein it permanently and perpetually re-

strained and enjoined the defendant from enforcing the provisions of Chapter 15,787, Laws of Florida, Acts of 1931, [fol. 132] as applied to documents, instruments or memoranda as illustrated by Exhibit 7 in the Stipulation of Facts as appears on page 108 of the (typewritten) transcript of the record.

Fifth Assignment of Error

The Court erred in entering its Final Decree on March 10, A. D. 1934, wherein it permanently and perpetually restrained and enjoined the defendant from enforcing the provisions of Chapter 15,787, Laws of Florida, Acts of 1931, as applied to documents, instruments or memoranda as illustrated by Exhibit 9 in the Stipulation of Facts as appears on page 109 of the (typewritten) transcript of the record.

Sixth Assignment of Error

The Court erred in entering its Final Decree on March 10, A. D. 1934, wherein if permanently and perpetually restrained and enjoined the defendant from enforcing the provisions of Chapter 15,787, Laws of Florida, Acts of 1931, as applied to documents, instruments or memoranda as illustrated by Exhibit 12 in the Stipulation of Facts as appears on page 110 of the (typewritten) transcript of the record.

Seventh Assignment of Error

The Court erred in entering its Final Decree on March 10, A. D. 1934, wherein it permanently and perpetually restrained and enjoined the defendant from enforcing the provisions of Chapter 15,787, Laws of Florida, Acts of 1931, as applied to documents, instruments or memoranda as illustrated by Exhibit 14 in the Stipulation of Facts as appears on page 112 of the (typewritten) transcript of the record.

[fol. 133] Eighth Assignment of Error

The Court erred in holding that the enforcement of Chapter 15,787, Laws of Florida, Acts of 1931, as contended for by the defendant Comptroller would result in taxing property of the plaintiffs beyond the jurisdiction of the State of Florida in violation of Section I of the Fourteenth

Amendment to the Constitution of the United States of America.

Ninth Assignment of Error

The Court erred in holding that the enforcement of Chapter 15,787, Laws of Florida, Acts of 1931, as contended for by the defendant Comptroller would result in taxing transactions taking place beyond the jurisdiction of the State of Florida and thus result in giving the statute extra-territorial effect and taxing property of plaintiffs beyond the jurisdiction of the State of Florida in violation of Section I of the Fourteenth Amendment to the Constitution of the United States of America.

Tenth Assignment of Error

The Court erred in entering its final decree dated March 10, A. D. 1934, wherein the defendant J. M. Lee, as Comptroller of the State of Florida, and his agents, servants, employees and attorneys, and any and all officers of the said State acting by, through or under his direction or administration were permanently and perpetually restrained and enjoined from enforcing the Florida Stamp Tax Act, being Chapter 15,787, Laws of Florida, 1931, against the plaintiffs, through demanding or requiring that any tax provided for under said Act be paid with respect to or by reason of any written communication, document or memo- [fol. 134] randum which may have been or may hereafter be delivered, passed or exchanged, by the plaintiff brokers or their employees to their Florida customers, or by their said customers to the plaintiffs or any of their employees, in connection with or in any manner related to the transactions for the purchase and sale of stocks or securities on Exchanges located outside of the State of Florida, which have been, or shall hereafter be made by the plaintiff brokers, or any of their servants or employees, for or on behalf of any customers, who in Florida have requested or ordered the same to be made, or who shall request or order the same to be made, and from levying any such tax provided for or contemplated by said Act, upon any books, ledgers, records, or memoranda in the possession of the plaintiffs or their employees in the State of Florida relating to their acts and business in connection with the purchase or sale of any stocks or securities on Exchanges lo-

cated outside the State of Florida for or on behalf of their customers, and which purchases or sales shall have been or shall be made by them in accordance with the requests, directions or orders to them by their customers, and from enforcing or causing to be enforced any penalties provided by said Act against the plaintiffs or any of their servants, agents or employees.

Eleventh Assignment of Error

The Court erred in not dismissing the Bill of Complaint.

Twelfth Assignment of Error

The Court erred in making and entering the Final Decree herein on March 10, A. D. 1934, in favor of the Plaintiffs and against the Defendant.

[fols. 135-144] Wherefore, the Defendant prays that said Final Decree may be reversed and for such other and further relief as to the Court may seem just and proper.

Cary D. Landis, Attorney General of the State of Florida; H. E. Carter, Assistant Attorney General; Robert J. Pleus, Assistant Attorney General; J. V. Keen, Assistant Attorney General, All of Tallahassee, Florida, Solicitors for Defendant.

[fol. 145] In United States District Court

[Title omitted]

Order Allowing Appeal—Filed March 28, 1934

This cause coming on this day to be further heard upon the petition filed by J. M. Lee, as Comptroller of the State of Florida, for an order allowing an appeal, and it appearing to this Court that he has presented with his petition for an order allowing an appeal his assignment of errors and a separate typewritten statement particularly disclosing the basis upon which it is contended that the Supreme Court of the United States has jurisdiction upon appeal to review the final decree in this cause as required by Rule 12 of the Rules [fol. 146] of the Supreme Court of the United States.

It is hereby ordered by the court that the appeal prayed for be and the same is hereby allowed and granted to the Supreme Court of the United States, from the final order or decree rendered in this cause, on March 10, A. D. 1934, and that said defendant give a bond with good and sufficient security in the sum of Two Hundred and Fifty ($250.00) Dollars, conditioned that he, as appellant, shall prosecute his appeal to effect and answer all costs if he fails to make his plea good; said bond to be approved by the Court.

Done and ordered at Pensacola, Florida, this 28th day of March, A. D. 1934.

Wm. B. Sheppard, Judge of the District Court of the United States, in and for the Northern District of Florida.

[fols. 147-149] Bond on Appeal for $250.00, approved and filed March 28, 1934, omitted in printing.

[fols. 150-156] Citation in usual form showing service on Shutts & Bowen, filed March 28, 1934, omitted in printing.

[fol. 157] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION AS TO THE CONTENTS OF THE TRANSCRIPT OF THE RECORD PURSUANT TO RULE 10 OF THE SUPREME COURT OF THE UNITED STATES

It is stipulated by and between the parties to this cause, by their undersigned solicitors, that the Clerk of the Court shall include in the transcript of the record of this cause the following described papers and none other, to-wit:

1. Bill of Complaint and all exhibits attached thereto, filed December 11, A. D. 1933.
2. Order convoking Court, filed December 11, A. D. 1933.
3. Notice of Hearing, filed December 12, A. D. 1933.
4. Motion to Dismiss, filed December 21, A. D. 1933.
5. Answer, filed December 21, A. D. 1933.

6. Order extending temporary restraining order, filed December 21, A. D. 1933.

[fol. 158] 7. Amendment to Bill, filed January 1, A. D. 1934.

8. Interlocutory Injunction, filed January 24, A. D. 1934.

9. Opinion, filed January 24, A. D. 1934.

10. Stipulation amending Bill of Complaint to change name of plaintiff firm, filed March 10, A. D. 1934.

11. Stipulation of Facts, and all exhibits attached thereto, filed March 10, A. D. 1934.

12. Final Decree, filed March 10, A. D. 1934.

13. Petition for Appeal, filed March 28th, A. D. 1934.

14. Assignment of Errors, filed March 28th, A. D. 1934.

15. Jurisdictional Statement, filed March 28th, A. D. 1934.

16. Order allowing appeal, filed March 28th, A. D. 1934.

17. Bond for Costs, filed March 28th, A. D. 1934.

18. Citation to Appellees and Proof of Service thereof, filed March 28th, A. D. 1934.

19. Proof of Service upon Appellees of the following papers: (1) A copy of petition for appeal; (2) A copy of order allowing the appeal; (3) A copy of the assignment of errors; (4) A copy of the jurisdictional statement; (5) A statement directing attention of the appellees to the provisions of Paragraph 3 of Rule 12 of the Rules of the Supreme Court of the United States, filed the 4th day of April, A. D. 1934.

20. Statement of Appellees: (1) Waiving their right to file the statement and motions permitted under Paragraph 3 of Rule 12 of the Rules of the Supreme Court of the United States; (2) Requesting the Clerk to proceed forthwith with the preparation of the transcript of the record without waiting the 15 days mentioned in Paragraph 3 of Rule 12 of the Rules of the Supreme Court of the United States, filed the 4th day of April, A. D. 1934.

21. This Stipulation.

Shutts & Bowen, Charles A. Carroll, Joseph F. McPherson, all of Miami, Florida, Solicitors for Ap-
[fol. 159] pellees. Cary D. Landis, Attorney General of the State of Florida. H. E. Carter, Assistant Attorney General. Robert J. Pleus, Assistant Attorney General. J. V. Keen, Assistant Attorney General.

[fols. 160 & 161] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 162] SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS ON WHICH APPELLANT INTENDS TO RELY AND DESIGNATION OF THE PARTS OF THE RECORD WHICH APPELLANT THINKS NECESSARY FOR THE CONSIDERATION OF THE APPEAL, TOGETHER WITH PROOF OF SERVICE ON APPELLEES—Filed April 12, 1934

Comes now, J. M. Lee, as Comptroller of the State of Florida, appellant herein, by his undersigned solicitors, and sets forth the following statement of the points on which he intends to rely in seeking a reversal of the final decree in this cause, to-wit:

First Point

The Court erred in failing to find that there is a complete and adequate remedy and relief at law afforded to [fol. 163] the Plaintiffs, under the provisions of the statutes of the State of Florida and under the decisions of the Supreme Court of the State of Florida, and that Plaintiffs having failed and neglected to avail themselves of such remedy or relief can not now be heard in equity.

Second Point

The Court erred in entering its Final Decree on March 10, A. D. 1934, wherein it permanently and perpetually restrained and enjoined the defendant from enforcing the provisions of Chapter 15,787, Laws of Florida, Acts of 1931, as applied to documents, instruments or memoranda as illustrated by Exhibit 3 in the Stipulation of Facts as appears on page 108 of the (typewritten) transcript of the record.

Third Point

The Court erred in entering its Final Decree on March 10, A. D. 1934, wherein it permanently and perpetually restrained and enjoined the defendant from enforcing the provisions of Chapter 15,787, Laws of Florida, Acts of 1931, as applied to documents, instruments or memoranda

as illustrated by Exhibit 6 in the Stipulation of Facts as appears on page 107 of the (typewritten) transcript of the record.

Fourth Point

The Court erred in entering its Final Decree on March 10, A. D. 1934, wherein it permanently and perpetually re-
[fol. 164] strained and enjoined the defendant from enforcing the provisions of Chapter 15,787, Laws of Florida, Acts of 1931, as applied to documents, instruments or memoranda as illustrated by Exhibit 7 in the Stipulation of Facts as appears on page 108 of the (typewritten) transcript of the record.

Fifth Point

The Court erred in entering its Final Decree on March 10, A. D. 1934, wherein it permanently and perpetually restrained and enjoined the defendant from enforcing the provisions of Chapter 15,787, Laws of Florida, Acts of 1931, as aplied to documents, instruments or memoranda as illustrated by Exhibit 9 in the Stipulation of Facts as appears on page 109 of the (typewritten) transcript of the record.

Sixth Point

The Court erred in entering its Final Decree on March 10, A. D. 1934, wherein it permanently and perpetually restrained and enjoined the defendant from enforcing the provisions of Chapter 15,787, Laws of Florida, Acts of 1931, as applied to documents, instruments or memoranda as illustrated by Exhibit 12 in the Stipulation of Facts as appears on page 110 of the (typewritten) transcript of the record.

Seventh Point

The Court erred in entering its Final Decree on March 10, A. D. 1934, wherein it permanently and perpetually restrained and enjoined the defendant from enforcing the
[fol. 165] provisions of Chapter 15,787, Laws of Florida, Acts of 1931, as applied to documents, instruments or memoranda as illustrated by Exhibit 14 in the Stipulation of Facts as appears on page 112 of the (typewritten) transcript of the record.

Eighth Point

The Court erred in holding that the enforcement of Chapter 15,787, Laws of Florida, Acts of 1931, as contended for by the defendant Comptroller would result in taxing property of the plaintiffs beyond the jurisdiction of the State of Florida in violation of Section I of the Fourteenth Amendment to the Constitution of the United States of America.

Ninth Point

The Court erred in holding that the enforcement of Chapter 15,787, Laws of Florida, Acts of 1931, as contended for by the defendant Comptroller would result in taxing transactions taking place beyond the jurisdiction of the State of Florida, and thus result in giving the statute extra-territorial effect and taxing property of plaintiffs beyond the jurisdiction of the State of Florida in violation of Section I of the Fourteenth Amendment to the Constitution of the United States of America.

Tenth Point

The Court erred in entering its final decree dated March 10, A. D. 1934, wherein the defendant J. M. Lee, as Comptroller of the State of Florida, and his agents, servants, [fol. 166] employees and attorneys, and any and all officers of the said State acting by, through or under his direction or administration were permanently and perpetually restrained and enjoined from enforcing the Florida Stamp Tax Act, being Chapter 15,787, Laws of Florida, 1931, against the plaintiffs, through demanding or requiring that any tax provided for under said Act be paid with respect to or by reason of any written communication, document or memorandum which may have been or may hereafter be delivered, passed or exchanged, by the plaintiff brokers or their employees to their Florida customers, or by their said customers to the plaintiffs or any of their employees, in connection with or in any manner related to the transactions for the purchase and sale of stocks or securities on Exchanges located outside of the State of Florida, which have been, or shall hereafter be made by the plaintiff brokers, or any of their servants or employees, for or on behalf of any customers, who in Florida have requested or ordered the same to be made, or who shall

request or order the same to be made, and from levying any such tax provided for or contemplated by said Act, upon any books, ledgers, records, or memoranda in the possession of the plaintiffs or their employees in the State of Florida, relating to their acts and business in connection with the purchase or sale of any stocks or securities on Exchanges located outside the State of Florida for or on behalf of their customers, and which purchases or sales shall have been or shall be made by them in accordance with the requests, directions or orders to them by their customers, and from enforcing or causing to be enforced any penalties provided by said Act against the plaintiffs or [fol. 167] any of their servants, agents or employees.

Eleventh Point

The Court erred in not dismissing the Bill of Complaint.

Twelfth Point

The Court erred in making and entering the Final Decree herein on March 10, A. D. 1934, in favor of the Plaintiffs and against the Defendant.

The entire transcript of the record as certified to by the Clerk of the District Court of the United States, In and For the Northern District of Florida, and filed in this Court is deemed necessary to be printed for the consideration of the points above set out.

Cary D. Landis, Attorney General of the State of Florida; H. E. Carter, Assistant Attorney General; Robert J. Pleus, Assistant Attorney General; J. V. Keen, Assistant Attorney General, All of Tallahassee, Florida, Solicitors for Appellant.

[fols. 168 & 169] Service of the foregoing and receipt of a copy thereof is hereby acknowledged.

The Appellant's foregoing direction to the Clerk for printing the entire transcript of record (excepting, however, repetitions of titles, styles of Court, etc., as referred to in Rule 13, par. 9) as being necessary for consideration of the cause, and for the Appellant's request that all such papers be included in the printed record, is hereby concurred in and joined in by the Appellees.

Dated at Miami, Florida, this 7th day of April, A. D. 1934.

Shutts & Bowen, by Charles A. Carroll; Charles A. Carroll, Joseph F. McPherson, All of Miami, Florida, Solicitors for Appellees.

[fol. 170] [File endorsement omitted.]

Endorsed on cover: File No. 38,547. N. Florida, D. C. U. S. Term No. 944. J. M. Lee, as Comptroller of the State of Florida, Appellant, vs. John P. Bickell, George B. Buchanan, Alfred W. Mansfield, et al., etc. Filed April 9, 1934. File No. 944, O. T., 1933.